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JAPANESE EXCLUSION

A STUDY OF THE POLICY AND THE LAW

BY

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By Mr. Johnson of Washington

Resolved, That the article entitled "Japanese exclusion * * * a study of the policy and the law," by John B. Trevor, master of arts, be printed as a House document, and that two thousand additional copies be printed for the use of the House Committee on Immigration and Naturalization.

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INTRODUCTION

Through a memorandum transmitted to the Secretary of State by the Japanese Ambassador under date of May 31, 1924, the Government of Japan served notice upon the American people of its displeasure at the enactment by Congress of the Immigration Act of 1924, and requested that all possible and suitable measures be taken for the removal of an "unjust discrimination." Now, since it has been made the business of certain organized bodies to bring pressure upon Congress for the modification of the exclusion provisions in the law, it behooves the citizens of this nation to understand precisely the nature of the problem with which Congress was confronted in dealing with the question of Japanese immigration. Many people forget that on other occasions, the Congress of the United States felt constrained to take drastic measures for the protection of the nation against an incursion of Oriental peoples. After the utter futility of diplomatic methods of procedure had been conclusively demonstrated, the Exclusion Act of 1882, imperfect as it was, settled the question of Chinese immigration, and when the barred zone was written into the statutes, the Hindus ceased to come. An exception, however, was made respecting the people of Japan at the earnest solicitation of its government, but clearly subject to a condition which has not been fulfilled. However, the Immigration Act of 1924 was not fathered in any spirit of animosity for "restricted immigration is not an offensive but purely defensive action. It is not adopted in criticism of others in the slightest degree, but solely for the purpose of protecting ourselves. We cast no aspersions on any race or creed, but we must remember that every object of our institutions of society and government will fail unless America be kept American."[1]

I. ASSIMILATION

The policy of Japanese exclusion is based not, as is sometimes alleged, upon theories as to the relative superiority or inferiority of the white and yellow races of mankind, but upon the fundamental principle that in the development of colonies of unassimilable people upon American soil, are to be found the seeds of national dissolution. As

[1] Extract from speech of President Coolidge, accepting the Republican nomination for election, August 14, 1924.

to the establishment of colonies of unassimilated immigrants within the United States, it would be a task of supererogation to present evidence of a fact universally admitted, but in respect to what constitutes the assimilation or assimilability of races, there is a wide divergence of opinion.

A glance at an ethnic or linguistic map of Europe, whence the vast preponderance of our population has been derived should throw a damper of discouragement upon those happy idealists of an international trend of mind who profess to believe in the ultimate unity of mankind. It is apparent that for centuries, may be a thousand years, colonies of varied races widely detached from the parent stock have maintained their ethnic individuality in the midst of alien communities, and in so continuing to exist, they have perpetuated racial animosities and antagonisms, dating from prehistoric times. The grant of even a limited form of constitutional government to the people of Austria-Hungary instead of welding the races into a unit, in fact probably hastened the disintregation of that empire. In our own country, we have been conscious of the fact that even in the absorption of kindred races, where the immigration rate of a given element has been high, there has been the disposition to intermarry and perpetuate the stock with all its traditions, which otherwise might rapidly have merged; in other words, assimilation of even kindred people would appear to be dependent upon the degree of concentration of any given element in a community.[2]

Taking the question by and large, the data so far available does not permit us to say with precision, in respect to any particular European race emigrating to the United States, what degree of dilution is necessary to enforce assimilation within a reasonable space of time from a political standpoint, but of one thing, we can speak with certainty and that is—the introduction of the negro into the American colonies resulted in the development of a controversy between the States which shook the institutions of our Republic to their foundation. Despite the outcome of that struggle, and may be because of it, there rises in the mind of every patriotic citizen, the thought that in the migration of Asiatic races to our shores, there lies a peril not only to the institutions of Republican government, but also to the very existence of our race in the land of our fathers.

The memorandum submitted by Mr. Hanihara with his note of May 31st, suggests that the brief period of time which has elapsed since the Japanese people established settlements within our territory, renders it impossible to form a conclusive judgment respecting their assimilability with the white race. It can hardly be expected that the American people with the knowledge already at their disposal respecting this question, could, for a moment, assent to the proposition that a part of their territory be regarded as a suitable field for a biological experiment by which Japan would be the sole beneficiary. As a matter of fact, Professor Robert E. Park, of the Uni-

[2] "I am alien born. All my early life was lived among the foreign born. In the community where I spent my boyhood, 30 foreign languages were spoken. Today the third generation of these foreign born families still speaks the languages of its forefathers and still cling to the customs of the lands they long ago left far behind." (Extract from speech of James J. Davis, Secretary of Labor, published in the New York Times, November 7, 1924.)

versity of Chicago, in his introduction to a book, entitled "The Japanese Invasion" by J. F. Steiner, exposes the fallacy that time will in any way mitigate the tension between unassimilable races, in the following words:

> It has been assumed that the prejudice which blinds the people of one race to the virtues of another and leads them to exaggerate that other's faults, is in the nature of a misunderstanding which further knowledge will dispel. This is so far from true that it would be more exact to say that our racial misunderstandings are merely the expression of our racial antipathies. Behind these antipathies are deep-seated, vital, and instinctive impulses. These antipathies, represent collision of invisible forces, the clash of interests, dimly felt but not yet clearly perceived. They are present in every situation where the fundamental interest of races and peoples are not yet regulated by some law, custom, or any other modus vivendi which commands the assent and the mutual support of both parties. We hate people because we fear them, because our interests, as we understand them at any rate, run counter to theirs.

We cannot, therefore, accept the statement that assimilation means an adjustment to new conditions and apparent adaptation to the social, political, industrial, and cultural institutions of another country or race.[3] As a matter of fact, while we, in our self-complacency, have assumed that the modernization of Japan is due to a recognition on the part of her people of an inherent superiority of our civilization, a close study of the political development of this marvelous people over the past three-quarters of a century, demonstrates that such a conception is a pleasant fantasy of our imagination. Japan adopted the fruits of modern civilization particularly in so far as they related to the perfection of a military and naval machine as a measure of defense against the persistent encroachment of European powers throughout the continent of Asia.[4]

We are confronted with the situation in our relations with Japan which involves a mutual acknowledgement of the fact that fundamentally speaking our racial characteristics and cultural development are wholly distinct. Dr. Benjamin Ide Wheeler, President Emeritus of the University of California, makes the following assertion in a statement published in the "Japan Advertiser," Tokyo, May 22, 1920:

> The two civilisations can not mingle, and the leaders in Japan agree that it is not well to attempt to amalgamate them. They can not and will not understand our civilization, and no matter in what part of the world he is, a Japanese always feels himself a subject of the Emperor, with the Imperial Government backing him, much as a feudal retainer had the support of his overlord in exchange for an undivided loyalty.[5]

The fact that a race issue has developed as a result of Japanese immigration upon the Pacific slope, and the fact that the British dependencies throughout the world—Canada, New Zealand, Australia, even the far off African dominions—all uphold with unshakable determination, a ban upon unrestricted entry of Japanese, is conclusive evidence that whatever may be the theories professed by certain missionaries and educators facing a problem peculiarly their own, "cultural" assimilation as an agency for the furtherance of peace, concord and mutual regard is a monumental illusion. How-

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[3] Cf. statement of Kiichi Kanzaki, hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 680.
[4] Cf. "The New Map of Asia, 1900–1919," by Herbert Adams Gibbons.
[5] Exhibit T, hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 400.

ever, a discussion of the question of assimilation would be incomplete without some reference to the suggestion that in miscegenation, there lies a solution of our difficulties.[6] On this phase of the question, the great philosopher Herbert Spencer, in a letter to Baron Kaneko Kentaro, dated August 26, 1892, had this to say:

> To your remaining question respecting the intermarriage of foreigners and Japanese, which you say is "now very much agitated among our scholars and politicians" and which you say is "one of the most difficult problems", my reply is that, as rationally answered, there is no difficulty at all. It should be positively forbidden. It is not at root a question of social philosophy. It is at root a question of biology. There is abundant proof, alike furnished by the intermarriages of human races and the interbreeding of animals, that when the varieties mingled diverge beyond a certain slight degree the result is inevitably a bad one in the long run. I have myself been in the habit of looking at the evidence bearing on this matter for many years past and my conviction is based on numerous facts derived from numerous sources.
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> This conviction I have within the last half hour verified, for I happen to be staying in the country with a gentleman who is well known and who has had much experience respecting the interbreeding of cattle; and he has just, on inquiry, fully confirmed my belief that when, say of the different varieties of sheep, there is an interbreeding of those which are widely unlike the result especially in the second generation, is a bad one; there arise an incalculable mixture of traits, and what may be called a chaotic constitution. And the same thing happens among human beings—the Eurasians in India, the half-breeds in America, show this. The physiological basis of this experience appears to be that any one variety of creature in the course of many generations acquires a certain constitutional adaptation to its particular form of life, and every other variety acquires its own special adaptation. The consequence is that, if you mix the constitution of two widely divergent varieties which have severally become adapted to widely divergent modes of life, you get a constitution which is adapted to the mode of life of neither—a constitution which will not work properly, because it is not fitted for any set of conditions whatever. By all means, therefore, peremptorily interdict marriages of Japanese with foreigners.
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> I have for the reasons indicated entirely approved of the regulations which have been established in America restraining the Chinese immigration, and had I the power I would restrict them to the smallest possible amount, my reasons for this distinction being that one of two things must happen. If the Chinese are allowed to settle extensively in America they must either, if they remain unmixed, form a subject race standing in the position, if not of slaves yet of a class approaching slaves; or if they mix they must form a bad hybrid. In either case, supposing the immigration to be large, immense social mischief must arise, and eventually social disorganization. The same thing will happen if there should be any considerable mixture of European or American races with the Japanese.[7]

To sum up this thought, since nature has interposed inhibitions which make possible the perpetuation of analogous species of the animal world living in propinquity and wholly without artifical restraint, man himself, be he American or Japanese, endowed not only with instinct, but also with the power of reason and superior intelligence, should perceive the menace which lurks in the perversion of a natural law. Therefore, we may say that miscegenation, while occasionally practiced, is an unthinkable solution of the problem, and exclusion of permanent settlers of both people from the country of the other, is inevitable.

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[6] Kalinin, president of the Union of Socialist Soviet Republics, suggested in a recent interview, that in the intermarriage of whites and blacks we will find a solution of the race problem. Isaac F. Marcosson, "After Lenin—What?", Saturday Evening Post, October 25, 1924.

[7] Statement of Mr. Joseph Timmons, hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, pages 1011, 1012.

II. GENTLEMEN'S AGREEMENT

Twenty years ago the American people and the Federal Government itself failed utterly, or at any rate neglected, to grasp the significance of the growing racial conflict on the Pacific slope of the United States. This circumstance is the more inexplicable in view of the fact that the conditions which arose as a result of Japanese immigration were but a duplication of those eventuating from the immigration of Chinese coolies imported to build the transcontinental railroads, commenced during the Civil War.[8] Prior to 1885, emigration from Japan was prohibited by law, therefore, while some seepage of her nationals to the United States appears in our official records[9] as far back as 1861, the number of entrants within our borders did not reach an appreciable figure until 1890. In that year, there were according to the census publication of 1920,[10] 2,039 Japanese within the states and territories of the Union. By 1900, during which year 12,628 Japanese entered our ports, the census enumeration showed a total Japanese population in continental United States of 24,326, and in Hawaii of 61,111. Within three years, that is to say, in 1920, the entrants from Japan rose to 20,041, and the people of California, as a result of attendant economic and social conditions, woke up to the fact that an Oriental migration had commenced which threatened to submerge our people and our civilization. After a brief recession in the numbers of those seeking to land upon our shores, the high mark of Japanese immigration was reached in 1907, with a total of 30,824 immigrants. By that time, through the efforts of the State and Municipal Governments of California, to save themselves by measures which proved offensive to Japan, the local issue became an international problem. Mr. Roosevelt, then President of the United States, after several attempts to coerce the people of California into an acceptance of the situation, and, thereby permit a relaxation of the tension in our relations with Japan, finally, after a careful examination of the facts, reached a conviction that "the people of California were right in insisting that the Japanese should not come thither in masses; that there should be no influx of laborers, of agricultural workers, or small tradesmen—in short, no mass settlement or immigration."[11] The adoption of this point of view resulted in the Administration opening negotiations with the government of Japan for the purpose of reaching, if possible, a modus vivendi respecting the immigration of its people "concerning which," says the House

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[8] "The following figures taken from Vol. II of the Census of 1920 will illustrate some phases of the situation which have been developing in the United States since 1880. According to the census of that year, there were 105,465 Chinese within the borders of our country, and upon the same date, the number of Japanese enumerated amounted to only 148; in the following decade, the number of Chinese was 107,488, and the number of Japanese, 2,039; in 1900, it will be noted that the number of Chinese had fallen to 89,863, whereas, the Japanese had increased to 24,336, an increase of say over 1,100 per cent; by 1910, the figure for Chinese was 71,531 and Japanese 72,157; and finally, in 1920, China is credited with 61,639 and Japan with 111,010." (International Conciliation Bulletin No. 202, An Analysis of the American Immigration Act of 1924, by John B. Trevor, p. 389.)

[9] Report of the Secretary of Labor, 1923, Appendix I.

[10] Volume II, page 29.

[11] Autobiography of Theodore Roosevelt, hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress, on S. 2576, page 12.

Committee Report No. 350, "the following is believed to be the only departmental statement:"[12]

To section 1 of the immigration act, approved February 20, 1907, a provision was attached reading as follows:

"That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens to go to any other country than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit certain citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions, or from the Canal Zone."

This legislation was the result of a growing alarm, particularly on the Pacific coast and in States adjacent to Canada and Mexico, that labor conditions would be seriously affected by a continuation of the then existing rate of increase in admissions to this country of Japanese of the laboring classes. The Japanese Government had always maintained a policy opposed to the emigration to continental United States of its subjects belonging to such classes, but it has been found that passports granted by said Government to such subjects entitling them to proceed to Hawaii or to Canada or to Mexico were being used to evade the said policy and gain entry to continental United States. On the basis of the above quoted provision, the President on March 14, 1907, issued a Proclamation excluding from continental United States "Japanese or Korean laborers, skilled or unskilled, who had received passports to go to Mexico, Canada, or Hawaii, and come therefrom."

Department circular No. 147, dated March 26, 1907, which has been continued in force as rule 21 of the immigration regulations of July 1, 1907, outlined the policy and procedure to be followed by the immigration officials in giving effect to the law and proclamation.

In order that the best results might follow from an enforcement of the regulations, an understanding was reached with Japan that the existing policy of discouraging emigration of its subjects of the laboring classes to continental United States should be continued, and should, by cooperation of the Governments, be made as effective as possible. This understanding contemplates that the Japanese Government shall issue passports to continental United States only to such of its subjects as are nonlaborers, or are laborers who, in coming to the continent, seek to resume a formerly acquired domicile, to join a parent, wife, or children residing there, or to assume active control of an already possessed interest in a farming enterprise in this country, so that the three classes of laborers entitled to receive passports have come to be designated "former residents," "parents, wives, or children of residents," and "settled agriculturists."

With respect to Hawaii, the Japanese Government of its own volition stated that, experimentally at least, the issuance of passports to members of the laboring classes proceeding thence would be limited to "former residents" and "parents, wives, or children of residents." The said Government has also been exercising a careful supervision over the subject of emigration of its laboring class to foreign contiguous territory.

While it has been alleged that under the terms of the Agreement the former channels of entry via Hawaii, Philippines, the Canal Zone, and other localities under the jurisdiction of the United States, were closed, the Agreement in fact opened wide a direct route from Japan to the United States, and conferred upon the officials of the Japanese Government the exclusive right to determine the eligibility of an immigrant.[13] Upon this question, the Commissioner General

[12] In this connection it should be borne in mind that throughout the entire period during which the controversy developed respecting the interpretation of the provisions of this agreement, the members of the Immigration Committees of Congress, had been denied access to the documents bearing upon the issue through refusal of the Government of Japan to permit an examination of the correspondence in the possession of the Department of State.

[13] Cf. report of State board of control of California to Gov. William D. Stephens, June 19, 1920, California and the Oriental, page 177.

of Immigration, in his Annual Report for 1920, pages 18 and 19, had this to say:

> Japanese laborers are allowed to enter Mexico and some Central and South American countries upon presentation of passports issued by Japan limited to one of such countries, the holders thereof not being entitled to admission thereon to the United States. Notwithstanding this inhibition, Japanese find their way into Mexico and surreptitiously or through smuggling devices enter or attempt to enter this country. Investigation has demonstrated that at least some of the so-called emigration from Japan to the countries south of us is not in good faith so far as the individuals engaged therein are concerned. * * *
>
> The two general terms of the agreement itself and the ex parte determination by officials of Japan, both in that country and in the United States, of matters arising under its terms have not been conducive at all times to the production of the results anticipated by both countries when the agreement was conceived.

For example, the Japanese Government interpreted the provisions respecting permission to join parents, wives and children, as a basis for the almost unlimited issue of passports to unmarried women migrating to prospective husbands in the United States. These so-called picture brides were married upon the docks on landing in the United States, but with the passage of the Immigration Act of 1917, it became difficult in all cases to continue this practice. The Japanese Ambassador, then, in response to an inquiry from our State Department seeking authoritative information respecting Japanese laws and customs relating to marriage, gave the following illuminating exposition of his government's interpretation of the Japanese code, which is quoted from a letter of Acting Secretary of State William Phillips to Senator James D. Phelan:

> I beg to state that in the law of Japan it is provided that marriage is complete and takes effect immediately upon its being notified either in writing or orally to the registrar by both parties, with the participation in the act of at least two witnesses of full age, and its being accepted by him; that if a document is employed for such notification it must be personally signed and sealed by the parties and the witnesses; but it is not necessary that the parties personally appear before the registrar; that if the notification is made orally, both the parties and their witnesses must personally appear before the registrar.
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> There is no provision in the Japanese law specifically for a case where one of the parties to a marriage contract lives in Japan and the other under foreign jurisdiction, nor has there appeared before the court any case involving this point, for the reason that the places of actual residence of the parties concerned form no essential requirement for a marriage to be legalized. Such being the essence of the formal marriage in Japan, a Japanese man residing in this country can marry a Japanese woman residing in Japan by personally signing and affixing his seal to the document to be presented before the registrar in Japan, and the validity of such marriage is amply attested by the issuance of certified copy of the family registry bearing the official seal of the registrar, which document the so-called "picture bride" proceeding to this country is always provided with.[14]

The net result of this declaration on the part of the Japanese Ambassador was a diplomatic defeat of our efforts to secure a restriction by diplomatic procedure upon the entry of picture brides, but the repercussion of sentiment in California which this incident created, resulted after prolonged negotiations in a pronouncement on the part of the Japanese Government that the issue of passports to

[14] Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 141.

picture brides would be discontinued after February 29, 1920.[15] Our astute friends across the Pacific were, however, not to be long deterred in finding a means of withdrawing from this impasse. The Japanese Diet passed a law extending the period of exemption from the provisions of the Conscription Act from one month to three months in behalf of subjects of the Imperial Government returning home to contract a marriage.

With the co-operation of the steam ship companies and Japanese organizations, it then became possible for a Japanese domiciled in the United States to obtain a bride with but little increase in cost over the former system.[16] This new method of evading the intent of the Gentlemen's Agreement was known as the Kankodan System. Now the Japanese Ambassador in his note of April 10, 1924, asserts that the total increase in our population during the period 1908–1923, as shown by the reports of the Commissioner General of Immigration, Table "B," amounts to only 8,681; that is to say, an annual average of 578 persons. This figure is arrived at by a comparison of the total number of persons admitted to the United States, as compared with the total number departed. While the Ambassador is from a legalistic standpoint justified in the utilization of this table, the inference to be drawn from the statistics quoted is wholly misleading for two reasons. First, because the Ambassador, having stated that his government had extended substantially the same regulations to Hawaii, as were embodied in the Gentlemen's Agreement which only covered entry at ports of continental United States, it would have been appropriate for him to have given the figures for gross entries of Japanese on American soil, that is to say—16,096, instead of 8,681. This omission was particularly ill-advised in giving to those familiar with the situation, an impression of a lack of candor on the part of his government, in view of the peculiarly critical conditions which have developed as a result of Japanese immigration to our great defensive outpost in the Pacific.[17] Second,

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[15] "The foreign office has sent private (secret) instructions to the responsible authorities at the ports of sailing that this class of brides must be shipped as speedily as possible. Consequently, the hotels at Nagasaki, Kobe, and especially Yokohama, present remarkable spectacles like human whirlpools on account of these brides. The ordinary passengers for America have to postpone their sailings. Twenty per cent of the passengers on every vessel are women according to the statement of a recent arrival from Japan." (Translation of an article which appeared in the Great Northern Daily News, a Japanese newspaper, June 2, 1920; offered in evidence by Mr. McClatchy, at the hearings before the Committee on Immigration and Naturalization, House of Representatives, 66th Cong., p. 230.)

[16] Cf. hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress, on S. 2576, pages 26 and 27.

[17] As a result of the revelations at the hearings before the House Committee on Immigration, Secretary of Labor James J. Davis was authorized by Congress to send a commission to the Hawaiian Islands for the purpose of investigating the conditions told of at the hearings. * * * The full report of this commission has never been made public, but from that portion given out by the Secretary of Labor, we quote as follows:

"In diagnosing the situation we have arrived at the following conclusions: * * * That attention should be specially called to the menace of alien domination, and that the present policy of 'parental adoption' and importation of 'picture brides' by the Japanese should be stopped, because these practices have defeated the purpose of the so-called 'gentlemen's agreement' by creating a method of genetal reproduction augmented by the picture bride that will soon overwhelm the territory numerically, politically, and commercially, unless stopped.

"The menace from a military standpoint can be fully verified by referring to the records of the related Federal departments.

"The question of national defense submerges all others into insignificance. If these islands are to remain American, the assured control of the political, commercial, social, and educational life of the islands must also be American, and the sooner we wake up to a fuller appreciation of this imperative and immediate need the sooner we will make the people of the Hawaiian Islands feel generally a greater sense of security and

because the gross figures include all those classes of persons who are treated as exempt under the provisions of Section 13 (c) of the Act as passed by Congress, to which the government of Japan took exception. In other words, the American people are not concerned with the ebb and flow of elements subject to wide fluctuations which do not tend to add to our permanent Japanese population, for example: An analysis of the data prepared by Dr. Gulick, and published by the National Committee on American Japanese Relations[18] will serve to illustrate the situation, as well as the official tables, and in view of his well-known sentiments toward Japan, should eliminate any question of bias. According to Table "D" of Dr. Gulick's pamphlet, which is reprinted as Appendix "B" of this paper, the total number of alien Japanese admited to and departed from the United States, 1909–1923, was 171,584 and 155,488, respectively. The difference between the two figures being the 16,096 increase to which allusion has already been made, but what Dr. Gulick does not demonstrate clearly, although it may be shown from his table, is that the total number of immigrant aliens admitted, male and female, was 109,355, as against 36,449 emigrant aliens departed, or a net gain to our permanent Japanese element by entries from over seas, of 72,906. This figure proves out by a comparison of the total non-immigrant Japanese admitted, 62,229, and the total non-emigrant Japanese departed, 119,039, or a difference of 56,810. This last figure being subtracted from the 72,906, gives the misleading result of 16,096, referred to above. In this connection, it should be borne in mind that "the term immigrant aliens represents true or real immigration, as the term emigrant aliens means true or real emigration.[19]

Before turning to another phase of this question it must be pointed out that although the Gentlemen's Agreement was concluded in 1907, it was not put into effect until July 1st, 1908, whereby some 16,418 additional Japanese entered our country,[20] and as pointed out by the Secretary of Labor in his report for 1923, Table 4,[21] entitled "Immigration and Emigration, and Net Gain or Loss, 1908–1923, by Race," shows for the Japanese, an immigration of 125,773, and an emigration of 41,781, or a net gain during that period when the Gentlemen's Agreement should have been in force of 83,992.

Emphasis has been laid in the Foreword to Dr. Gulick's pamphlet, upon a statement to the effect that "Japanese male laborers in the

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insure control of all that contributes to make continued living in the Territory of Hawaii worth while.

"In the interest of the national defense and the welfare of American citizenship in the Territory, the commission respectfully and earnestly recommends that the question of alien domination be immediately referred to the Congress of the United States for the necessary remedial legislation."

Chairman Albert Johnson, of the House Committee on Immigration, in his report on the Hawaiian situation, referring to the report of the Davis Commission, observed:

"That report * * * contains statements of such startling character that the Secretary does not feel at liberty to make its full text public. The report has been offered to the House Committee on Immigration and Naturalization as a confidential matter to be read in executive session. The committee declines to receive the report under such conditions." (Report of the national oriental committee of the American Legion to the fifth annual convention, San Francisco, Calif., October 15 to 19, 1923; hearings before the Committee on Immigration, United States Senate, 68th Cong., on S. 2576, pp. 138 and 139.)

[18] New Factors in American-Japanese Relations and a Constructive Proposal.

[19] Report of the Commissioner General of Immigration, 1923, page 8.

[20] Cf. hearings before the Committee on Immigration, United States Senate, on S. 2576, page 24; also, Report of Secretary of Labor for 1923, Table 3, page 132.

[21] Page 133.

United States are steadily decreasing."[22] From the context of the paragraph, it would appear that the basis for this contention lies in the fact that "between the summers of 1908 and 1923, 97,877 alien Japanese males entered the United States (including Hawaii). But 120,614 departed, making a net diminution of 22,737."[22] It is, however, pointed out that during this time there was a net increase of females amounting to 38,833. Now, the fact of the matter is—still using Dr. Gulick's data, see Table "D" of the pamphlet[23]—there was a gain of 17,126 male immigrants and 55,780 female immigrants, the two elements added together giving the actual increase of male and female immigration of 72,906, referred to above. The loss, therefore, is to be found in those groups of our fluctuating population, classified by the Bureau of Immigration as non-immigrants. That is to say, Table "D", shows that 92,497 non-immigrant Japanese males departed and 52,634 Japanese males entered at our ports, showing a loss in gross figures of 39,863 males. If the gain in the "true or real immigration" of Japanese males be subtracted, we get the net figure of 22,737, loss in an element which, as has repeatedly been pointed out, does not in reality concern the problem with which we have had to deal. Now, a word as to the women in respect to whom Dr. Gulick admits a gain in gross entries, although he does not point out the actual increase of this element to whose amazing fecundity is to be attributed the large increase in our permanent Japanese population today, for it was pointed out to the Senate Committee on Immigration, during the consideration of S. 2576, in the course of the last session, that while the ratio of births in the white population was as one to forty, the ratio of increase among the Japanese was as one to eleven.[24] In this connection, the reader will perhaps recall that the Japanese Ambassador in his note of April 10th, 1924, said:

> Besides this there is, of course, the increase through births of the Japanese population in the United States. This has nothing to do with either the Gentlemen's Agreement or the immigration laws.[25]

This is a contention which is in fact controverted by the flood of brides which, by one means or another, poured in through our gates to increase not only by their own numbers, our population, but through their children, to add to the complexity of the race problem in the United States.[26]

Although as will be gathered from the foregoing exposition, the interpretation of the statistics offered by Mr. Hanihara, or Dr. Gulick, cannot be accepted, it is possible to rest on the following quotation from Dr. Gulick's testimony before the Senate Committee on Immigration:

> Mr. GULICK. Now, Mr. Chairman, I would like to say that I think the usefulness of the present Gentlemen's Agreement has come to an end. Through the admission of the parents, wives and children, there has come an amount of

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[22] New Factors in American-Japanese Relations and a Constructive Proposal, page 3.
[23] Appendix B of this paper.
[24] Cf. hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress, on S. 2576, page 21.
[25] Hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress, on S. 2576, page 168.
[26] As the surreptitious entries are, of necessity, principally of the male sex, and it is demonstrable that our census of the Japanese population is well below the actual figures, it may well be that the loss in males shown by the record of arrivals and departures is more apparent than real.

immigration which has caused serious conditions—serious psychological conditions.[27]

That is the truth, and the Gentlemen's Agreement came to an end, not because of any question of superiority or inferiority, or an unwillingness in the past to deal with Japan upon a basis of consideration accorded to no other power in the world, but because the Gentlemen's Agreement was interpreted, to put no varnish on the facts, by the officials of the Imperial Government in a legalistic and technical spirit unworthy of the representatives of a great and friendly government.

III. THE QUESTION OF ENCROACHMENT UPON THE SOVEREIGNTY OF THE STATE AND THE PROBLEM OF DUAL ALLEGIANCE

In the preceding sections of this paper, the discussion of American and Japanese relations has been confined to a consideration of the assimilability of the races and the efforts made by our Government to prevent the increase by immigration of an element regarded by the citizens throughout large areas of our country as a menace to our institutions and national life. Although relatively speaking, the maximum estimate of the number of Japanese within the borders of continental United States, does not reach a startling figure if spread over so vast an area as our boundaries encompass, yet the American people must not fail to recognize that the elimination of the white race from even a small section of the land by an alien people is as much a matter of national concern as a loss of a limb constitutes an irreparable injury to the human body. Such a loss of control, such a domination, both from an economic and political standpoint, is not necessarily accomplished by violence or suddenly, but may result as effectively from the pacific penetration of a people, whom we do not absorb, be the reasons therefor what they may.

In Hawaii, as already pointed out, the situation is critical, because strategically it is the key to the Pacific coast,[28] and the Japa-

[27] Hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress, on S. 2576, page 72.

[28] The following passages from an article by Hector C. Bywater, a British naval critic, throw an interesting sidelight on the strategic problem which confronts us in respect to our far eastern dependencies, as well as upon the diplomatic astuteness of the representatives of Japan:

"* * * In the fall of 1920 the Japanese naval authorities in cooperation with the general staff worked out a scheme for fortifying the principal islands that guard the approach to the coasts of Japan proper. This measure was intended to counteract the then impending development of Cavite and Guam as first-class bases for the American Pacific Fleet * * *.

"By December the last of the batteries had been constructed and armed with heavy long-range guns, the barracks, munitions, depots, aerodrome, and radio station had been constructed, and every navigable approach had been rendered impregnable.

"Meanwhile the Washington conference had assembled, and Admiral Baron Kato, of the Japanese delegation, had taken the first opportunity to inform his American colleagues that Japan regarded the abandonment of the Philippine and Guam fortifications as the condition precedent to negotiations for the reduction of her shipbuilding program. If the United States would agree to this, Japan, on her part, was prepared to suspend her own plans for fortifying her Pacific islands and would at the same time cooperate most willingly in any practicable scheme for limiting her floating armaments.

"Baron Kato did not add, however, that Japan, having been secretly engaged in fortifying her island bases for many months previously, had just completed the work, whereas scarcely any progress had been made in the development of the American stations at Cavite and Guam.

"Whether the American naval experts were cognizant of the facts is a moot point, but it seems scarcely credible that they would have acquiesced in the status quo proposal for Pacific bases had they known that Japan was already in possession of a thoroughly equipped naval station at the Bonins. If they did know this, one is forced

nese population comprise about one-half the total number of people dwelling in those islands. In California, the gravity of the situation is evidenced by the determination of its people to cure the malady from which they suffer in its inception, and not wait inevitable extinction while the futility of palliative treatment is being demonstrated at their expense.

It is true that the land area of the State of California amounts to over ninety-nine million acres, but a glance at the map will satisfy the reader that a very large part of this area is mountainous. Something over eighteen million acres are national forests, and some twenty million acres more are unappropriated public lands. (July 1, 1919.) The balance is made up of Indian reservations, school lands, private timber holdings, and farm lands, of which some 3,893,500 acres are irrigated and constitute very largely, the best lands in the State.

The following quotation taken from the report of the State Board of Control of California, is the essence of the situation:

Of this total (3,893,500), Orientals, on December 31, 1919, occupied 623,752 acres, approximately 16 per cent of the total, of which 88,944 was owned in fee or under contract of purchase and 534,808 acres was held by lease or crop contract. Japanese and Japanese corporations occupy 458,056 acres of the whole total.

While it is not absolutely true that all lands occupied by Orientals are irrigated, this is so nearly the fact that for all practical calculations, the figures given for Oriental holdings may be taken as irrigated lands. A few counties, notably San Luis Obispo and Solano, show Orientals occupying considerably more acreage than the total number of irrigated acres given in the schedule for these counties. However, the very nature of the crops raised by the Orientals necessitates irrigation.

With this slight qualification in mind, it is interesting to note that in some of the richest counties in the state, Orientals occupy a total acreage ranging from fifty to seventy-five per cent of the total irrigated area, notably San Joaquin County with a total of 130,000 irrigated acres with Orientals occupying 95,829 acres; Colusa County with a total of 70,000 with Orientals occupying 51,105; Placer County with 19,000 total, Orientals occupying 16,321; and Sacramento County with 80,000 total, Orientals occupying 64,860.

It is but fair to state again that this comparison is not absolutely accurate because the total irrigated areas given on land Schedule No. 2 are actual irrigated lands, whereas the totals of acreage occupied by Orientals in each county include all acreage irrigated and unirrigated occupied by Orientals. However, very little grain crops or other unirrigated crops are raised by Orientals and a very small percentage of the total acreage occupied by Orientals is uncultivated and without crops of any kind; the total idle acreage uncropped being about 6¾ per cent of the total acreage occupied by Orientals.

Under the schedule of Japanese Farm Products, the figures compiled by the State Bureau of Labor Statistics for 1909 show the total acreage occupied by Japanese at that time to be 83,252 and the acreage shown for the year 1919 by the Japanese Agricultural Association of California is 427,029, an increase in the ten year period of 412.9 per cent. The report for crop valuations for 1909 shows $6,235,856 and for the year 1919 a total of $67,145,730, a total increase in value of crops raised by Japanese during the ten year period, of 976.8 per cent. Because of the character of the crops raised by

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to conclude that their protests against the renunciation of the right to put the western islands in an adequate state of defense were overruled by the Washington Cabinet on political grounds.

"In any case Japan scored a signal triumph in securing the adoption of the status quo agreement with regard to Pacific fortifications. From her point of view it was a strategical gain of the first magnitude, which more than compensated for the reduction of her battle fleet." * * * (Reprinted from the Atlantic Monthly, February, 1923, in the Congressional Record, of February 17, 1923, pp. 3928 to 3932.)

Japanese, their activities are confined almost entirely to twenty-nine counties in the state, these being the highly developed agricultural sections.

According to the Japanese Association of America in their memorial address to the President of the United States upon his visit to the coast in 1919, "The Japanese in agriculture constitute the most important element in number as well as in other respects," this statement having been made in reference to Japanese in California.

Mr. Toyoji Chiba, Managing Director of the Japanese Agricultural Association of California, says in his Truth of the Japanese Farming in California that 58 per cent of the Japanese living in California are settled in agricultural production in the country.

Should the American farmer view with alarm this rapid increase in agricultural lands occupied by Orientals, with the attendant increase in total annual crop valuations? [29]

The following table, entitled "Percentage of Total of Each Crop Delivered to Canneries that is Supplied by Japanese Growers," [30] is illustrative of the inroads made by the Japanese farming population upon the total production of certain specialties to which they devote their attention:

	Per cent
Tomatoes:	
Sacramento district (fully 50 per cent is operated exclusively by Japanese, while another 30 per cent is dependent on Japanese labor with whom the American owners are in partnership on a share basis; these two, taken together, made up the 80 per cent)	80
Turlock district	79
Santa Clara Valley district	60
Kings County district	50
Suisun district	31
Asparagus, Sacramento district	61
Spinach:	
Sacramento district	78
Kings County district	90
Santa Clara County district	82
Modesto district	100
Other vegetables:	
Sacramento district	90
Santa Clara Valley district	100
Peaches, pears, apricots, plums, cherries:	
Sacramento district	7
Turlock district	6
Graton district	2
Kings County district	45
Suisun district	14
Yuba City district	9
Alameda district	8
Santa Clara Valley district	3
Modesto district	2
Contra Costa district	1

That this table does not exaggerate the situation will be demonstrated by a comparison with the following table quoted from the statement of Mr. Kiichi Kanzaki, General Secretary of the Japanese

[29] Report of the State board of control of California to Gov. William D. Stephens, California and the Oriental, June 19, 1920, pages 50 and 51.

[30] Report of the State board of control of California to Gov. William D. Stephens, California and the Oriental, June 19, 1920, page 50.

Association of America, and compiled by the Japanese Agricultural Association at the end of 1918:[31]

Product	Acreage by Japanese	Total acreage by all	Per cent of Japanese to total acreage
Berries	5,968	6,500	91.8
Celery	3,568	4,000	89.2
Asparagus	9,927	12,000	82.7
Seeds	15,847	20,000	79.2
Onions	9,251	12,112	76.3
Tomatoes	10,616	16,000	66.3
Cantaloupes	9,581	15,000	63.8
Sugar beets	51,604	102,949	50.1
Green Vegetables	17,852	75,000	23.8
Potatoes	18,830	90,175	20.8
Rice	16,640	106,220	16.0
Hops	1,260	8,000	15.7
Grapes	47,439	360,000	13.1
Beans	77,107	592,000	13.0
Cotton	18,000	179,860	10.0
Corn	7,845	85,000	9.2
Fruits and nuts	29,210	715,000	4.0
Hay and grain	15,753	2,200,000	----------

While Mr. Kanzaki challenges the accuracy of the data presented by the State Board of Control in their report, on the ground that the figures for 1909 are not taken from the same source as that from which the statistics for 1920 were derived and therefore not comparable, the discrepancy which he alleges to exist is insufficient to justify any qualification of the contention that Japanese occupation of land and penetration of markets in California, has progressed by leaps and bounds throughout the period, 1909 to 1920; that is to say, Mr. Kanzaki states that the total increase in the land occupied by the Japanese during the 10-year period is only 217.9%, instead of 412.9%, and in respect to the value of the crops produced, there is an increase of only 503.7%, instead of 978.8%. Obviously it is possible to concede the alleged discrepancy, and yet find in Mr. Kanzaki's figures, ample basis for grave anxiety.

Now, this progressive development of Japanese settlements upon the land and control of certain markets leads up to the subject matter with which we are about to deal; that is to say, the encroachment upon the sovereignty of the state and the problem of dual allegiance. Whatever may be the means by which the white population is eliminated from certain areas of the state by an alien people, the mere fact of elimination involves the eventual cession of political control. Upon this phase of the question, Dr. Yoshi Kuno has this to say:

> The Japanese are not living in this State as emigrants. In my opinion, they are establishing plantations of their own, introducing their peculiar civilization and governmental, as well as educational institutions right in the midst of American civilization. With the recognition of their home Government through their consulate offices, they have established a sort of quasi-government in leading cities, towns, and districts, wherever the size of the Japanese population warrants. They levy a tax on Japanese males and Japanese families under the caption of a membership fee. With the permission of the consulate, they collect fees for all official services rendered the Japanese by that office. All the Japanese who live in the United States, whether they were born in this country or have come from Japan have many affairs to be at-

[31] Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 739.

tended to in connection with the home Government, because all are claimed as subjects by the Japanese Government. However, though these matters must be handled in the Consulate office, that office will have nothing to do with anything that does not reach it through the channels of the quasi-Japanese Government established in the towns and cities in California, and otherwise known as The Japanese Association.[32]

On page 6 of the pamphlet from which this quotation has been taken, it says that the Japanese Association of America, through its Secretary, Mr. K. Kanzaki, "has issued a general denial of Dr. Kuno's charges, so far as they affect the objects and acts of the Association." It, therefore, behooves us to examine carefully the evidence tending to support or disprove the statement that the Japanese Association acts as agents of the Japanese Government in the United States. Now, Article 3 of the Agreement and By-Laws, of the Japanese Association of America, Section I—General Rules, reads thus:

ART. 3. This association is organized by the local Japanese association under the jurisdiction of the Japanese consulate general of San Francisco.[33]

Since this article tends to directly support the statement of Dr. Kuno, it is strange that Mr. Kanzaki in his written statement filed with the House Committee on Immigration, pages 675 and 685, makes no mention of this clause, or attempts in any way, to controvert the inference which may reasonably be drawn from its incorporation in the By-Laws of his organization, although to be sure, he prints the document as Appendix "A" to his statement.[34] It would seem, however, that his explanation of the method by which the Japanese consuls ascertain the facts on which the applications for the importation of wives by resident Japanese under the terms of the Gentlemen's Agreement were based, precludes a denial of the fact that the Japanese Association of America and its branches are at least semi-official agencies.[35]

Corroboration of Dr. Kuno's contention respecting the activities of the Japanese Association of America, is to be found in a translation of an article published by Nichi-Bei, January 29, 1920, which reads as follows:

ASSOCIATION IS CONSUL'S TOOL

The present Japanese Association of America, the Japanese Association of America of the past year or two, has absolutely nothing of the nature of a self-governing body of the resident Japanese.

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[32] "Japan's Secret Policy," pamphlet published by the Sacramento Bee, page 4. Original articles copyrighted by the Oakland (Calif.) Tribune in the latter part of October, 1920. Doctor Kuno is stated to be the son of General Kuno, of the Imperial Japanese Army, and professor in the department of oriental languages in the University of California.

[33] Report of the State board of control of California to Gov. William D. Stephens, California and the Oriental, June 19, 1920, page 127.

[34] The wording of Article 3 as given by Mr. Kiichi Kanzaki, does not correspond to that printed in the official report of the State Board of Control. Mr. Kanzaki's version reads as follows:

"ART. 3. This association is organized by the local Japanese associations within the jurisdiction of the Japanese consulate general of San Francisco." (Hearings before the Committee on Immigration and Naturalization, House of Representatives, p. 735.)

In view of the fact that the report of the State Board of Control is an official document, the writer has deemed it appropriate to abide by its interpretation of the General Rules. It will be observed that there is a possible difference in the inference to be drawn from the two versions.

[35] Cf. testimony of Mr. Joseph Holmes, hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 306.

The fact that it is nothing more than a branch shop of the consulate general would be hard to deny. On the surface, in its organization and system, though imperfect, it has the appearance of a self-governing body and makes a pretense of self-government in the election of officers and directors, but in fact its officers and directors consist of only such persons as are approved by a certain office.

If popular opinion opposes the secret service fund is used to send agents in all directions to repress it by crafty expedients, and this is carried even to the extent of abusing official authority for that purpose. With the directorate of the Japanese Association of America organized in such a way, is it not a natural result that the directors trample on the will of the people?

PUPPET OF BUREAUCRACY

In the present crisis we do not think it wise to produce proofs that the Japanese Association of America is nothing more than a branch office of the consulate general, and, therefore, we shall not write much about it, but no one would have the hardihood to deny the clear and important facts of the movement started the latter part of the year before last and continued into last year for the amendment of the land law; and the photograph-marriage question last year and this; and the movement which is expected to be carried out during the present year. The Japanese Association of America has degenerated and is the puppet of bureaucracy. From first to last it moves at the bidding of a certain office. Moreover, it employs an opaque policy in dealing with the anti-Japanese question.[36]

A translation from the Los Angeles correspondence column in Shin Sekai (San Francisco) May 19, 1920, is even more explicit as to the relationship existing between the Secretary of the Central Japanese Association and Consul Oyama of Los Angeles, which reads as follows:

This is the first step in the national census of Japan, and by special order from Premier Hara the minister for foreign affairs has directed the consulates to take the census of Japanese residing abroad. The consul, on the basis of the registration referred to above, is to make up his report to be forwarded by December 10 (or, according to another report, by October 31). The local Japanese associations are requested to exert themselves for the completion of the registration of all Japanese by the date fixed, August 21.[37]

The State board of control of California, in its report to Governor Stephens asserts:

Japanese agricultural activities are thoroughly organized. There are 55 local associations in the State of California, 19 in the nine counties of southern California, affiliated with the Japanese Agricultural Association of southern California, and 36 associations in northern and central California affiliated with the Japanese Agricultural Association and the California Farmers' Co-operative Association. All of these local associations are in turn closely connected with the Japanese Association of America in California, which organization is under the direct supervision of the Japanese consul general at San Francisco, and he in turn is directed by the Japanese ambassador at Washington. The indiivdual members in these associations pay dues monthly which range from $3 to $15 per year per member, the sum total of the dues thus raised amounting to approximately $135,000 per year in the State of California. This sum is used in such manner as seems advisable to the parent association for the advancement of the agricultural, educational, and financial interests of the Japanese.[38]

From the evidence which has been offered in the forgoing paragraphs, there is obviously good ground for the belief that

[36] Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 393.
[37] Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 403.
[38] Report to Gov. William D. Stephens, June 19, 1920, page 118.

the Japanese Association of America and the central Japanese Association and their subsidiaries and kindred organizations are in fact, agents of the Japanese Government.[39] While one of the documents quoted above intimates that these Japanese organizations have interfered in the domestic political situation, it is appropriate at this point to offer evidence of the degree of infringement upon international comity, their activities have attained. For example:

[Sacramento Bee, January 22, 1920]

Japanese Seek to "Persuade" Next Legislature—Charges to this Effect are Made by Leading Japanese Newspapers Following Picture Bride Friction.

Charges that the Japanese already have started a movement to "negotiate" for legislation in the 1921 legislature that will be beneficial to their own interests are made in an editorial appearing in the Nichi-Bei, Japanese American News, the leading Japanese newspaper of San Francisco.

The paper states the plan is to raise a fund of $100,000 with which to conduct "negotiations" with the legislature, and that $50,000 is to be secured in "certain quarters" in the old country, conditioned on the collection of a like sum from Japanese residents in America.

[Sacramento Daily News, June 18, 1920]

Japanese Raising Secret Emergency Fund—Officials of Japanese Association of America Touring the State to Fight the Initiative.

The Japanese Association of America has been busy for several weeks sending out its secretaries and officials to hold conferences with local secretaries and directors concerning what is called the "emergency movement."

By the "emergency" is meant the proposed initiative law which is regarded as a menace to Japanese expansion. The "emergency movement" is an effort to defeat the initiative.

For this purpose funds are being collected, but the plan for expending the money is a "secret". And this effort to raise money for some sort of "leaping in the dark" has let the cat out of the bag * * *

Meanwhile the canvass for funds goes on, with success indicated by published reports from different sections of the State.

A Watsonville item in the New World, after stating that "the Watsonville Japanese Association is now in the midst of raising funds for the emergency and our people will understand its purpose and are contributing liberally", adds this naive remark:

"Of course, this sort of movement is not altogether approved by us as individuals, but as the unanimous decision of the delegates of the cooperating association, the Watsonville Association accepts the plan, etc."

In many of these local reports there is a tone of doubt as to the expediency of this secret drive for funds by the Japanese Association of America.[40]

It would thus appear, as already indicated, that there is substantial basis for the contention that the Japanese Association of America and kindred bodies have not only exercised a measure of supervision and control over Japanese nationals domiciled in the United States in behalf of their Government, but also these organizations seem to have gone so far as to seriously intervene in the domestic political situation in the State of California. Now, while the law of nations does not prevent a state from exercising jurisdiction over its subjects traveling or residing abroad,[41] this super-

[39] Cf. testimony of Mr. T. Karakawa, secretary of the Japanese Association of the Sacramento Valley, hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 279.

[40] Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, pages 394 and 395.

[41] Cf. Oppenheim's International Law, page 202; also, Case of Apollon 9 Wheat. 362, Digest of International Law, Moore, Vol. II, page 213

vision and control are strictly limited to the voluntary acquiescence of the aliens domiciled within foreign territory, because—

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself.[42]

But, if the nationals of a foreign state intervene in the domestic affairs of a foreign government within whose jurisdiction they are domiciled, the allocation and degree of responsibility for acts infringing upon its sovereignty must be determined by their relation to the state to which they owe allegiance. Obviously a state under international law is not only directly responsible for acts committed by its agents acting in accordance with instructions, but also must assume a measure of responsibility for unauthorized injurious acts of its agents and its subjects.[43] The instructions given by Mr. Buchanan, while Secretary of State to Mr. Shields, so clearly indicates the policy of the United States respecting interferences by officials of our Government in domestic affairs of a foreign nation, that it may be well to quote it:

> The plain duty of the diplomatic agents of the United States is scrupulously to abstain from interfering in the domestic politics of the countries where they reside. This duty is specially incumbent on those who are accredited to governments mutable in form and in the persons by whom they are administered. By taking an open part in the domestic affairs of such a foreign country they must, sooner or later, render themselves obnoxious to the executive authority, which can not fail to impair their usefulness.[44]

The following quotation from the instructions given by Mr. Sherman, when Secretary of State, to Mr. Sill, Minister to Corea, is equally explicit respecting the activities of private individuals domiciled in foreign territory:

> March 30, 1897, the American minister at Seoul was directed to communicate by a circular to each and every citizen of the United States whom he might know or ascertain to be sojourning in Corea, "the repeatedly expressed view of the Government of the United States that it behooves loyal citizens of the United States in any foreign country whatsoever, to observe the same scrupulous abstention from participating in the domestic concerns thereof, which is internationally incumbent upon his Government. They should strictly refrain from any expression of opinion or from giving advice concerning the internal management of the country, or from any intermeddling in its political questions."[45]

Under these circumstances, and in view of the activities of Japanese subjects heretofore related, a peculiarly difficult situation has arisen in the United States through the fact that Japan claims the allegiance of all persons of Japanese parentage born within our jurisdiction. These persons are, of course, under the Fourteenth Amendment of our Constitution, citizens of the United States.[46]

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[42] Marshall, C. J. Schooner Exchange *v.* McFaddon (1812), 7 Cranch, 116, 136. Digest of International Law, Moore, Vol. II, page 4.
[43] Cf. International Law, Oppenheim, Vol. I, page 208.
[44] Digest of International Law, Moore, vol. 4, page 573.
[45] Digest of International Law, Moore, vol. 4, page 15.
[46] Cf. "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States." (R. S. sec. 1992; act April 9, 1866, c. 31 Sec. I, 14 Stat. 27; Barnes Federal Code, p. 764.)

Our relations are further complicated through the fact that until the passage by the Japanese Diet on July 8th, 1924, that is to say, about two months after Congress had enacted into law the provisions to which the Japanese Government takes exception, it was practically impossible for a child born of Japanese parents domiciled in the United States to expatriate,[47] a fact conclusively established by Article 20 Bis. and Articles 23 and 24, of the Japanese Nationality Law, as amended in 1916, which read thus:

ART. 20 Bis. In case a Japanese subject who has acquired foreign nationality by reason of his or her birth in a foreign country has domicile in that country, he or she may be expatriated with the permission of the minister of state for home affairs.

The application for the permission referred to in the preceding paragraph shall be made by the legal representative in case the person to be expatriated is younger than 15 years of age. If the person in question is a minor above 15 years of age, or a person adjudged incompetent, the application can only be made with the consent of his or her legal representative or guardian.

A stepfather, a stepmother, a legal mother, or a guardian may not make the application or give the consent prescribed in the preceding paragraph without the consent of the family council.

A person who has been expatriated loses Japanese nationality.

* * * * * * *

ART. 23. A Japanese child who, through legal procedure, has acquired a foreign nationality, loses Japanese nationality.

ART. 24. A male above the full age of 17 or more does not lose Japanese nationality under the provisions of the preceding six articles, until he shall have served in the army, navy, or otherwise he has no obligation thereto.[48]

Referring to this policy, a witness before the Committee on Immigration of the United States Senate, testified that out of 90,000 Japanese born upon American soil, only 64 had availed themselves of the privilege of expatriation accorded to them under the laws of Japan,[49] and so far as can be ascertained, the total number of expatriations recorded to date under the provisions of the Act, probably do not exceed two thousand. It is not surprising, therefore, to find evidence of the fact that Japanese born in this country and under our laws, American citizens, have been compelled to apply to the Japanese Consul as Japanese subjects for the purpose of importing a wife

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[47] This law was not in effect by September 1, 1924, and so far as the writer can ascertain, it has not yet been put into effect. It may perhaps be well to point out that Japanese procedure in respect to promulgation and putting into effect legislation is vague. For example: The Japanese Year Book of 1923, page 48, referring to the right of ownership of land which was formerly denied to individual foreigners, states that by a law promulgated in 1910, the situation has undergone a change, yet at the conclusion of a digest of the provisions of this law, adds that the date of putting the law into operation still remains unfixed.

[48] Hearings before the Committee on Immigration and Naturalization, House of Representatives, Sixty-sixth Congress, page 711. Cf. Appendix C (1) Translation of nationality law of Japan promulgated April 1, 1899; (2) Translation derived from American sources of the amendment passed by the Japanese in 1924; (3) Translation of the same amendment, understood to have been issued by the Japanese foreign office. The reader will observe a curious discrepancy in the two translations of the amendment adopted by the Diet in the summer of 1924, inasmuch as the American translation does not embody the note appended to the translation alleged to have been issued by the Japanese foreign office. Up to the moment of going to press, the writer has been unable to ascertain the reason for the omission in the American translation of any reference to so important a qualification as appears in the note appended to the Japanese translation. In any event, as indicated elsewhere, the amendment does not seem to have as yet been put in force.—Author.

[49] Hearings before the Committee on Immigration, United States Senate, Sixty-eighth Congress on S 2576 page 7.

under the terms of the Gentlemen's Agreement,[50] or that American citizens of Japanese parentage should have been summoned for military duty by the Government of Japan.[51]

This attitude on the part of Japan raises the question of dual allegiance from an issue which has been in abeyance for many years to one of the first importance to all immigrant receiving nations in the western hemisphere or elsewhere.[52] It may be, therefore, well before turning to another phase of the problem which we have under discussion, to briefly review the law of expatriation.

While it is true that at common law,[53] it was held to be a universal principle that a natural born subject could not by any act of his own discharge his natural allegiance, and American practice was for a period during our history somewhat confused, nevertheless, the policy of the United States became definitely fixed through the adoption of Section 1999 of the Revised Statutes, which proclaimed that the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness. This section of the statute concludes with a statement to the effect that any declaration, instruction, opinion, order or decision of any officer of the United States which denies, restricts, impairs or questions the right of expatriation, is declared to be inconsistent with the fundamental principles of the Republic.[54]

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[50] "Japanese from Camp Schofield, Hawaii, sworn in as American soldiers and wearing the khaki of Uncle Sam, applied, as Japanese citizens to the Japanese Consul at Honolulu and secured the consular certificate entitling them to bring over picture brides from Japan. The ultimate object was to aid in increasing the Japanese population of Hawaii and thereby hasten the time when Japan would control Hawaii by force of numbers." (Joseph Timmons, Exhibit XV, section 201, Japanese immigration and colonization, brief prepared for consideration of the State Department, by V. S. McClatchy, October 1, 1921, p. 66.)

[51] "Mr. McCLATCHY. * * * Japan claims and insists on every individual Japanese (whether he be born in Japan and an immigrant here or born in the United States and accorded all the rights of American citizenship] discharging all the duties and obligations of Japanese citizenship, and vicariously punishes his relatives in Japan if he fails to do it. I will just read one extract in support of that last statement. The Honolulu Advertiser of January 16, 1923, contained a very striking item in regard to the case of Henry K. Fukuda, member of the Society of American Citizens of Japanese Ancestry, born in Hawaii, a citizen of the United States, claiming and exercising all the rights and duties of American citizenship.

"It seems that Fukuda, as all other Japanese born in this country and claiming American citizenship, was cited to show himself in Japan and perform his military duty, and he failed to do so. He had certain relatives over there, and those relatives were punished because Mr. Fukuda, an American citizen, declined to go back to Japan and perform his conscription duties. He has a receipt showing that H. Nakahara, who was his relative, had paid $5 to the district attorney of the Iwakuni district for alleged violation of the military conscription law by H. Fukuda.

"Senator KING. They insist upon dual citizenship, the same as Germany did for awhile?

"Mr. McCLATCHY. They do, Senator, but they carry it to a very much greater extent. Germany does not in this country maintain associations under which every American citizen of German parentage is influenced and controlled; those associations subject to major associations, and those in turn subject to the control and direction of the local German consul. That is the fact with regard to Japan and the Japanese, and here I have in my exhibits the proof of it." (Hearings before the Committee on Immigration, United States Senate, 68th Cong., 1st sess., on S. 2576, pp. 6 and 7.)

[52] The institute of international law, having taken up the question of conflicts of nationality during its session in 1895 at Cambridge, adopted the following principles:

1. No one should be without nationality.
2. No one can have simultaneously two nationalities.
3. Everyone should have the right to change nationality.
4. A renunciation pure and simple does not suffice to establish loss of nationality.
5. Nationality by origin should not be transmitted to infinity from generation to generation established abroad.

Cf. LeDroit International, Charles Calvo, Vol. IV, fifth edition, section 93, page 117.

[53] Cf. Blackstone Comity, Vol 1, p. 369; F. E. Smith's International Law, Vol. 4, p. 82.

[54] Act of July 27, 1868, c. 249, Sec. I, 15 Stat. 223; Barnes Federal Code, p. 766.

In the case of children born abroad of American parents, who are citizens of the United States in accordance with the provisions of Section 1993 of the Revised Statutes,[55] the law provides that if continuing to reside outside the American jurisdiction, they shall in order to receive the protection of this Government, be required upon reaching the age of 18 years, to record at an American consulate, their intention to become residents and remain citizens of the United States, and they shall further be required to take the oath of allegiance to the United States upon attaining their majority.[56]

It will be observed that the provisions of the statute requiring the registration of the children of American parentage residing abroad, in no way, impairs their right of expatriation, but is merely a condition precedent to establishing a claim for the protection of our government while living under foreign jurisdiction, therefore, there is no ground for the contention sometimes made that the Japanese and American practice upon this question is identical.

Now, while the amendments to the Nationality Law of Japan give the impression that it is the intention of that government to change its policy respecting the expatriation of its citizens, it is impossible to discuss the act as it now stands with precision, in view of the fact that its action is dependent upon the passage of supplementary ordinances which so far as can be ascertained, have not yet been formulated. For example: While there is an apparent similarity in the first clause of Section XX–2 of the Nationality Law of Japan as now amended, to the provisions of our law relating to children born in foreign territory, we cannot assume that similarity as a fact until the list of designated states referred to therein is published, and it shall appear that the United States is one of the states to which its provisions will apply. If the United States is designated by imperial ordinance to be subject to the provisions of Section XX–2, then any child born after such designation of Japanese parents domiciled in the United States may, if he so desires, declare his intention to retain his allegiance to Japan. If he does not declare his intention, his American nationality is to be presumed, but it cannot be said now, when or how this declaration of the child's intention may be made. Obviously, this may be a vital point in determining the effect of the amendment. On the other hand, it appears that in the case of a child born on American soil prior to the designation of the United States—assuming it to be designated—the child may relinquish his Japanese nationality at will, provided he retains an American nationality and an American domicile; in other words, all children of Japanese parents heretofore born within

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[55] "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States." (Acts, April 14, 1802, c. 28, sec. 4, 2 Stat. 155; Feb. 10, 1855, c. 71, sec. 1, 10 Stat. 604; Barnes Federal Code, p. 764.)

[56] "All children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority." (Act of March 2, 1907, c. 2534, secs. 5–7, 34 Stat. 1229; Barnes Federal Code, p. 764.)

the United States are still so far as we can judge from the wording of the amended sections Japanese subjects until they see fit to expatriate, but bear in mind, that this privilege of expatriation is contingent on a retention of American nationality, and an American domicile. Just what the nationality of such a child, an American citizen, under the Constitution of the United States, would be from the standpoint of Japanese Law in the event of a change of domicile, is not by any means clear. Should, however, the United States fall within the category of states not designated by imperial ordinances, Section XX–3 provides that a Japanese born upon our soil and an American citizen under our constitution and laws, can only expatriate with the permission of the Minister of Home Affairs, but in any case, attention must be particularly drawn to the provision that a recognition of expatriation both under Sections XX–2 and XX–3, is attendant not merely upon the assumption of a foreign nationality, but upon the retention of that domicile, because under Section 26 of the Nationality Law of Japan, a Japanese by origin as distinguished from a Japanese by naturalization, can repatriate, if domiciled in Japan, merely upon permission from the Minister of Home Affairs.[57] In the event that a Japanese born and domiciled abroad declares his intention of retaining Japanese nationality after the designation of states, or does not avail himself of the privilege of expatriation, if born prior to the designation of states, as specified under Section XX–2, as amended, his descendants indefinitely continue to be regarded as Japanese under the laws of Japan, where the Jus Sanguinis prevails.[58]

In any case, however the ordinances may be drawn, we may safely assert since they cannot alter the fundamental principles of Sections XX–2 and XX–3, that the question of dual allegiance will still be with us. Should the amendments be put into effect, conditions unquestionably will be modified, possibly somewhat ameliorated, but even so, there remains a deplorable conflict of principle and policy, which must continue to breed discord and uncertainty between the nations and peoples of the world, for it must be understood that while this discussion of dual allegiance and the right of expatriation has been confined to Japan and the United States, the problem is worldwide. There is no uniformity of law, and there is a great divergence of interests, therefore, it behooves those states whose resources and relative sparsity of population render them peculiarly susceptible to conquest by pacific penetration, to devise means in concert to avert a peril which looms upon the horizon in the East, as well as in the West.[59]

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[57] Cf. DeBecker's International Private Law of Japan, 1919, page 23.

[58] Cf. DeBecker's International Private Law of Japan, 1919, page 26; also Section I, Nationality Law of Japan, 1899, Appendix C of this paper.

[59] Declaration by Mussolini respecting the effect of the United States immigration act of 1924 upon the economic and political situation today, which reads as follows:

"Italy, poor in raw materials, has been hit hard by the American immigration quota law. We must have an outlet, and our main aim must be to provide raw materials: otherwise peace will be peace under constraint, and in 1925 we would have decay." (New York Times, November 17, 1924.)

Also note developments in Brazil, where, according to the Japanese Year Book, 1923, 37,000 Japanese are cultivating rice and coffee, mostly in the State of Sao Paulo; also, note the development of colonies in Peru, Bolivia, and elsewhere, page 46, Japanese Year Book for 1923.

IV. DOCTRINE OF RACE EQUALITY

We have seen as the facts relating to Japanese immigration have been reviewed, that the scope of the problem is very broad. It involves not merely questions relating to the assimilability of the races, or the good faith demonstrated by Japanese officials in the performance of obligations assumed by their government, but also the penetration of an alien people maintaining such close affiliation and relation to the land of their origin as to amount to an actual encroachment upon the sovereignty of the United States. The extent of his encroachment has been evidenced by the fact brought out in the preceding section that the government of Japan claims the allegiance of persons born under our flag of Japanese blood who are citizens of the United States, but we now reach the crux of the whole problem in a discussion of the doctrine of race equality.

Few people who have not studied deeply the basic causes of the deplorable controversy which has arisen with Japan, appreciate the difficulties with which Congress was faced in the preparation of a clause in the Immigration Act of 1924, which would inhibit an influx of Orientals at our ports, not offend the susceptibilities of a friendly nation, and also, above all things, protect the sovereignty of the United States. It has been said that no valid reason has been adduced by which the committees on immigration of Congress can justify the omission of Japan from the provisions of the Quota Law, since on the basis of the census of 1890, it is estimated that the total immigration permissible would amount to 146. The proponents of this point of view are apparently oblivious of the fact, that aside from other considerations which made such a course impossible, there could be no guarantee that once the bills in the Senate and in the House came on the floor of Congress, that the Census of 1890 would be adopted, and if it were not adopted, but had a later date been inserted in its place, we would then have been confronted with a Japanese immigration of sufficient magnitude to materially aggravate the political and social conditions in our insular possessions and on the Pacific coast of continental United States. As a question of practical politics from this point of view, it should be obvious for anyone familiar with the procedure of Congress to recognize the impracticability of putting Japan under the quota, but aside from this circumstance, it is inconceivable that all other circumstances being put aside, the committees of Congress could advocate the adoption of a policy permitting the entry of an alien people to settle upon our lands, who are ineligible for citizenship, under the laws of the United States.

Now, while it is true that in its correspondence with our Government, Japan has recognized that "fundamentally speaking, it lies within the inherent sovereign power of each state to limit and control its immigration to its own domains," [60] it in fact challenges this privilege because the necessities of the situation involve the adoption of the principle of eligibility for citizenship, as a prerequisite to enter the territory of the United States for the purpose of settlement. In this connection, the reader must bear in mind that regardless of

[60] Note of Mr. Hanihara to Mr. Hughes, May 31, 1924. See Appendix A of this paper.

the basis upon which any nation presumes to exclude subjects of the Japanese Empire from their territories, the government of Japan regards that circumstance as an unfriendly act, for example: At the time that the annexation of the Hawaiian Islands was under contemplation by the United States, although the territorial government had declared in its constitution, an intention to secure eventual union with this country, the Japanese Government, aware of the facts and with full knowledge of the policy of our government as to these matters, continued to encourage the emigration of its subjects to those islands, and took the stand that a maintenance of the status quo, that is to say, the independence of Hawaii was essential to a good understanding between the powers which have interests in the Pacific.[61] In other words, although the Japanese Ambassador, Mr. Hanihara, protested on behalf of his government that "the mere fact that a few hundred thousand of her nationals will or will not be admitted into the domains of other countries is immaterial so long as no question of national susceptibility is involved", we have proof of a disposition to threaten our government nearly a generation and a half before he wrote on behalf of his Government, that the incorporation of the exclusion provision in the Immigration Act of 1924, would be attended by "grave consequences". As a matter of fact, it is demonstrable that while the usual connotation of the term "grave consequences" in diplomatic correspondence was subsequently disavowed,[62] there can be no question but what the record of the past thirty years, is replete with evidence of an aggressive policy, for example: In a letter written to Sir George O. Trevelyan, Mr. Roosevelt, referring to the Japanese question, said:

> I had been doing my best to be polite to the Japanese, and had finally become uncomfortably conscious of a very, very slight undertone of veiled truculence in their communications in connection with things that happened on the Pacific slope; and I finally made up my mind that they thought I was afraid of them * * * I found that the Japanese war party firmly believed that they could beat us, and, unlike the Elder Statesmen, thought I also believed this.[63]

In 1913, Viscount Chinda protested on behalf of the Japanese Government against the California Land Laws, on the grounds that "the enactment is at variance with the accepted principles of just and equal treatment upon which good relations between friendly nations must, in the final analysis, so largely depend,"[64] and later "during

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[61] Cf. Mr. Sherman, Secretary of State to Mr. Torn Hoshi, Japanese Ambassador, August 14, 1897, MS. Notes to Jap. Leg. I, 533, Digest of International Law, Moore, pages 505–507.

[62] See Appendix A of this paper.

[63] The McKinley and Roosevelt Administrations 1897–1909, by John Ford Rhodes, page 372.

[64] Foreign Relations of the United States, 1913, page 633. To the note embodying this statement, the Secretary of State replied in part as follows:

"I can not help feeling that in the representations submitted by Your Excellency the supposition of racial discrimination occupies a position of prominence which it does not deserve and which is not justified by the facts. I am quite prepared to admit that all differences between human beings—differences in opinion, differences in nationality, and differences in race—may provoke a certain antagonism; but none of these differences is likely to produce serious results unless it becomes associated with an interest of a contentious nature, such as that of the struggle for existence. In this economic contest the division no doubt may often take place on racial lines, but it does so not because of racial antagonism but because of the circumstance that the traditions and habits of different races have developed or diminished competitive efficiency. The contest is economic; the racial difference is a mere mark or incident of the economic struggle.

"All nations recognize this fact, and it is for this reason that each nation is permitted to determine who shall and who shall not be permitted to settle in its dominions and become a part of the body politic, to the end that it may preserve internal peace

the winter of 1917, an alien land bill was brought up in Idaho. Again sharp and emphatic protest was made by the Japanese Government. It was reported in the press that the Japanese Ambassador had made it plain to our State Department that it would be difficult for the Japanese Government to keep its people in hand if such legislation was passed."[65]

In view of the circumstances which have been narrated, it is not astonishing, therefore, that during the Peace Conference at Versailles, an effort should have been made by the government of Japan to force into the Covenant of the League, a declaration respecting racial equality, which read as follows:

> The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States, Members of the League, equal and just treatment in every respect, making no distinction, either in law or fact, on account of their race or nationality.[66]

In support of this claim Baron Makino said:

> It is not necessary to dwell on the fact that racial and religious animosities have constituted a fruitful source of warfare among different people throughout history, often leading to deplorable excesses. * * *
> As a result of this war, the wave of national and democratic spirit has extended to remote corners of the world, and has given additional impulse to the aspirations of all peoples; this impulse once set in motion * * * can not be stifled, and it would be imprudent to treat this symptom lightly.[66]

Coincident with the efforts which were being made in Paris, to establish the doctrine of race equality, the Japanese Ambassador in a note placed in the President's hands, just before he sailed for Europe, the second time, said:

> In view of the fundamental spirit of the League of Nations the Japanese Government regards as of first importance the establishment of the principle that the difference of race should in no case constitute a basis for discriminatory treatment under the law of any country. Should this great principle

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and avoid the contentions which are so likely to disturb the harmony of international relations.

"That the Imperial Government of Japan accept and act upon these principles precise proof is not wanting.

"By the Imperial Ordnance No. 352 of 1899, which is understood to be still in force, it is provided:

"'ARTICLE 1. Foreigners, even those who either by virtue of treaty or custom have not freedom of residence, may hereafter reside, remove, carry on trade, and do other acts outside the former settlements and mixed residence districts: *Provided*, That in the case of laborers they can not reside or carry on their business outside the former settlements or mixed residential districts unless under the special permission of the administrative authorities.

"'The classes of such laborers (referred to in the preceding paragraph) and details for the operation of this ordinance shall be determined by the Minister for Home Affairs.'

"The department is advised that this ordinance was promulgated in order to prevent the immigration of Chinese laborers, who were attracted to Japan by the rise of wages which began in that country after the war with China and has continued ever since. As a result of this rise in wages conditions grew up not unlike those which have existed at certain places in the United States, the objection made in Japan to Chinese laborers being that they worked for lower wages than the natives. In the summer of 1907, as the department is advised, two groups of Chinese laborers were excluded from Japan under the application of the ordinance above mentioned, one of the excluded groups being composed of coolies, the other of skilled artisans such as mechanics. The department is not advised that the ordinance has been or is enforced as against laborers other than Chinese. The department is, however, far from imputing to the Imperial Government in its enforcement of the ordinance a design to make a racial discrimination. On the contrary, the department assumes that the question with which the Imperial Government were seeking to deal was in its essence economic, and racial only incidentally, and that this would continue to be the case even if the ordinance, although it was no doubt originally designed to exclude Chinese laborers, should be applied to laborers of another race." (Foreign Relations of the United States, 1913, note of July 16, 1913, pp. 641 and 642.)

[65] The Immigration Problem, by Jenks and Lauck, page 352.

[66] "Woodrow Wilson and World Settlement," by Ray Stannard Baker, page 234.

fail of general recognition the Japanese Government do not see how a perpetual friction and discontent among nations and races could possibly be eliminated.[67]

When this question came up for final disposition, "Viscount Chinda, the Japanese delegate who always brought pressure to bear or made threats," according to Mr. Baker, "responded that 'Japanese public opinion was so strongly behind this amendment that he asked the Commission to put it to the vote. If the amendment were rejected, it would be an indication to Japan that the equality of members of the League was not recognized and as a consequence the new organization would be most unpopular. * * * Public opinion in Japan was very much concerned over this question, and certain people have even gone so far as to say that Japan would not become a member of the League of Nations unless she were satisfied on this point.'"[68] This was, of course, as Mr. Baker said, a threat.

This record of intimations and even threats that friendly relations with Japan are dependent upon a recognition of delicately adjusted susceptibilities respecting national and racial equality, leading up to an interchange of communications between our respective governments during the past year to which allusion has already been made, must, if we are to form a sane judgment upon the action of Congress, be studied in connection with the practice of the principles professed by the government of that nation, and also in relation to the actual facts as to its attainment of the status of a world power.

A little over half a century ago the Government of Japan pressed for a recognition of complete national sovereignty and the abolition of the privilege of extra territoriality accorded to the European powers, but obviously it was impossible for civilized states to make this concession until a complete revision of the judicial system of Japan had been accomplished. In 1878, the United States concluded a treaty along the lines desired by Japan, but it contained a clause conditional on the acceptance of its principles by the European powers. This acceptance did not appear practicable until 1894, when a series of treaties were negotiated which eventually accorded to the government of Japan, full recognition of domestic sovereignty and equality among civilized nations of the world.[69]

A digression is perhaps appropriate at this point, to outline the political results coincident and immediately following the signature of those treaties. The ink was barely dry, when the government of Japan having laid the groundwork by preliminary steps in 1875, 1882 and 1884, for a definite policy of territorial expansion entered upon a military occupation of Korea, and without a declaration of war, attacked and defeated a detachment of the Chinese fleet, a battle which was followed by the sinking of the British steamer *Kow-Shing*, under circumstances which threatened to involve European complications. However, war being declared on August 1st, and followed by a brilliant campaign on land and sea, the Chinese Empire succumbed and sued for peace. Japan deprived of the fruits of her victories through a concert of the European powers naturally observed with feelings of deep resentment, the practical

[67] "Woodrow Wilson and World Settlement," by Ray Stannard Baker, page 236.
[68] "Woodrow Wilson and World Settlement," by Ray Stannard Baker, page 237.
[69] Digest of International Law, Moore, vol. 4, pages 259–261.

dismemberment of China by Russia, Germany, France and Great Britain, without any material gain other than a vast enhancement of her prestige, the islands of Formosa and Pescadores, together with some indemnity in money. The spirit of Japan at this time, may be gathered from some remarks made in the course of a speech delivered by Count Okuma, an ex-Minister for Foreign Affairs. Count Okuma said:

The European Powers are already showing symptoms of decay, and the next century will see their constitutions shattered and their empires in ruins. Even if this should not quite happen, their resources will have become exhausted in unsuccessful attempts at colonisation. Therefore who is fit to be their proper successors if not ourselves? What nation except Germany, France, Russia, Austria, and Italy can put 200,000 men into the field inside of a month? As to their finance, there is no country where the disposal of surplus revenue gives rise to so much political discussion. As to intellectual power, the Japanese mind is in every way equal to the European mind. More than this, have not the Japanese opened a way to the perfection of a discovery in which foreigners have not succeeded even after years of labour? Our people astonish even the French, who are the most skilful among artisans, by the cleverness of their work. It is true the Japanese are small of stature but the superiority of the body depends more on its constitution than on its size. If treaty revision were completed, and Japan completely victorious over China, we should become one of the chief Powers of the world, and no power could engage in any movement without first consulting us. Japan could then enter into competition with Europe as the representative of the Oriental races.[70]

Within a decade, Japan having concluded a mutually advantageous agreement with Great Britain, which in a sense prevented a renewal of the concert of the powers which had thwarted her designs in 1894, served an ultimatum on the Russian Government and without delay or the formality of a declaration of war, sent her torpedo boats into Port Arthur, and virtually annihilated the Pacific Squadron of the Czar. Two detached vessels being surprised in the Harbor of Chemulpo, were likewise destroyed. Following a desperate struggle, Russia shaken by internal disorder, was compelled to acknowledge defeat, and the territories which she occupied and upon which Japan looked as her rightful prey and legitimate sphere for the expansion of her population, fell into her hands.[71]

Again a decade passed, then, according to Mr. Baker:

Within a few weeks after the Battle of the Marne, despite the efforts of Great Britain and the United States to dissuade her and keep the war out of China,

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[70] The Peoples and Politics of the Far East, Henry Norman, page 392.

[71] In a book entitled "Japanese Emigration to China," by Ta Chen, appears a quotation from a document alleged to have been printed for private circulation, entitled "General Policies of Japan's Emigration" (p. 65), by Baron Shimpei Goto, which is an illuminating exposé of Japanese emigration policy respecting the mainland of Asia. Baron Goto is said to have been "for many years civil governor of Taiwan and the most experienced colonial administrator of Japan." As the document affords much food for thought, assuming the baron to be correctly quoted, the following excerpt with an explanatory paragraph by Mr. Ta Chen, relating to the use of certain Chinese words in the text, is printed as follows:

"Permanent victory in Manchuria largely depends upon an increase in population in Japanese colonies. German inhabitants in Alsace-Lorraine played no small part in winning for Germany the Franco-Prussian War in 1870. If Japan has 500,000 emigrants in Manchuria, and several millions of horses, mules, and other domestic animals, they would be of great use in case of war. If in such a war opportunities are favorable to Japan, they can be armed at once to attack our enemy. If opportunities are unfavorable, they can also be used to maintain strongholds for negotiating peace. The 'peacefully disguised military preparedness' thus forms my main policy in colonizing Manchuria and Korea. In brief, this emigration policy is 'to practice the doctrine of Par in the name of Wong.'"

"(The baron is using a maxim of Chinese political philosophy. The doctrine of Wong stresses virtue, culture, and benevolence, while that of Par, force and conquest. For example, the enlightened emperors of the Chow dynasty were said to have practiced the imperial ways of Wong, whereas its usurping vassals that of Par. Baron Goto insists that in the name of virtue and culture Japan should plan military conquests in China.)"

she issued an ultimatum to Germany demanding the surrender of Kiauchau, but promising to return it to China, to whom, of course, it really belonged. When nothing happened Japan, assisted by Great Britain, captured the port. Instead of returning it to China, however—she has made no promise as to time!—she took over the Shantung railroad and enforced a control in the province more extensive and drastic than Germany had ever attempted. She also engaged in the familiar business of trafficking with corrupt Chinese officials. She permitted her traders to spread the demoralizing opium traffic. All this aroused the bitter suspicion and hatred of the Chinese people, who demanded that the Japanese withdraw, and later began to boycott everything Japanese.

In January, 1915, the Japanese, still eagerly improving the opportunities presented by the preoccupation of Europe, presented to China the famous or infamous "Twenty-one Demands," part of which were kept secret from the outside world. These demands, if accepted entire, would have made China practically a vassal of Japan. When China objected, Japan sent a forty-eight-hour ultimatum (on May 7th) and China was forced to submit to a large proportion of them. And one of them gave Japan a secure foothold in the vast rich provinces of Manchuria. Since then she has entered Siberia and still sits there.[72]

Throughout this period, the policy of the United States, except for the occupation of the Philippines, was confined to the exercise of moral pressure to maintain the integrity of China as a political unit, establish the principle of the "open door" for commercial enterprise in Eastern Asia, and a refusal to recognize the imperialistic designs of the Island Empire in Siberia and in the German possessions of the Pacific. Such a policy was, of course, contrary to the interest of Japan, and it may be, there is some significance in the suggestion that the government of that nation is using the issue of race equality, as a pawn in the diplomatic game, because it must not be forgotten that although the British dominions maintain the necessity of a policy of exclusion with an ardency, equal to that demonstrated by our fellow citizens on the Pacific coast, all the diplomatic pressure for the recognition of race equality, seems to be focused upon the United States. Upon this point, Mr. Thomas F. Millard, author of "Conflict of Policies in Asia," says:

Japan has used this issue of "race equality" as trading stock in diplomatic negotiations without giving it the importance in her own mind which it seems to have on the surface. She does not practice race equality as between Japanese and Formosans, Koreans, or Chinese. Actual race equality in the United States would surely be unfavorable to Japanese, since Chinese and other Oriental races could undercut Japanese in America's economic field if their equality were recognized in our laws.

The race equality slogan is used for the benefit of Japanese alone. Yet Japan has carried on in all eastern Asia for years a Pan-Asian propaganda to line up Asiatic races against Europe and America. She does this, not to help the other races, but as a part of the plan of making Japan the head of a movement which will finally subject all Asia to Japan.[73]

However, this may be, we must recognize that Japan faces a stupendous problem through the rapid expansion of her population in a very congested area, that is to say, a population of 57,656,000 concentrated in an area of 147,698 square miles, or a density of 390.26 per square mile. It is, therefore, not astonishing that the Japanese should cast their eyes across the Pacific and see in the three coast states of our country, covering an area of 318,095 square

[72] "Woodrow Wilson and World Settlement," by Ray Stannard Baker, page 243. According to the Japan Year Book, 1923, the last column of Japanese troops left Vladivostock October 25, 1922. The occupation of the Russian province of Saghalien is, however, therein stated to be still a fact.—Author.

[73] Reprinted from extension of remarks by Hon. Albert Johnson, House of Representatives, June 4, 1924.

miles, a density of population amounting to 17.5 per square mile, a possible solution of their difficulties.[74] This in fact is precisely what some statesmen of Japan have done, for example: Mr. Sennosuke Yokata, President of the Legislative Bureau of the Japanese Cabinet is quoted by the Associated Press as follows:

> The American territory is vast enough for every surplus population of the world, and the countries that suffer in this way have been allowed to look to the United States as a land for the realization of the aspirations of those who seek new life and fortunes. Appreciating at the same time the generosity and the assimilating powers of the American people, I believe that America alone can solve this great problem of mankind.[75]

That the emigration of Japanese subjects is not regarded in quite the casual manner implied by Mr. Hanihara in his note of April 10th, and the issue not one predominately of sentiment, is evidenced through the fact that the government of Japan, according to the Monthly Labor Review, organized a Japanese Imperial Economic Council, on the first of April 1924. The purpose of the Council, according to the Review is as follows:

> The council which is under the direct control of the Prime Minister, is formed to study the question of promotion of the economic progress of the Empire, to supply information for the ministers concerned, and to formulate plans for the ministries dealing with these matters. * * * The following questions which are of importance from the standpoint of industry and labor have been submitted to the council: The protection or encouragement of basic industries, improvement of medium and small-scale industries, promotion of the mechanical engineering industry, improvement and increase in the number of dwelling houses, and protection of emigrants and *the encouragement of migration.*[76]

Having discussed the doctrine of race equality in its broad aspects from an historical and political standpoint, it is now necessary to briefly review its bearing upon our domestic situation from a legal standpoint. Since we recognize the fact that the national welfare precludes the admission of Orientals of any kind whatsoever, for permanent settlement within our territory, it is difficult to see any reasonable objection to the application of a principle which has been written upon our statute books for one hundred and thirty years.

When the interpretation of Section 2169 came before the Supreme Court as a result of the efforts of one Takao Ozawa, a person of the Japanese race, born in Japan, who sought to be admitted as a citizen of the United States through the United States District Court for the territory of Hawaii, Justice Sutherland in delivering the opinion of the Court said:

> * * * The language of the Naturalization Laws from 1790 to 1870 had been uniformly such as to deny the privilege of naturalization to an alien unless he came within the description "free white person." By Section 7 of the Act of July 14, 1870, c. 254, 16 Stat. 254, 256, the naturalization laws were "extended to aliens of African nativity and to persons of African descent." Section 2169 of the Revised Statutes, as already pointed out, restricts the privilege to the same classes of persons; viz: "To aliens (being free white persons, and to aliens) of African nativity and persons of African descent." It is true that, in the first edition of the Revised Statutes of 1873, the words in brackets, "being free white persons and to aliens," were omitted, but this was clearly an error

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[74] See Appendix E of this paper.
[75] New York Times, December 4, 1921.
[76] Italics are those of the author. This quotation from the Monthly Labor Review is based on industrial and labor information, Geneva, August 18, 1924, pages 17 and 18.

of the compilers, and was corrected by the subsequent legislation of 1875. (C. 80, 18 Stat. 316, 318.)[77] Is appellant, therefore, a "free white person" within the meaning of that phrase as found in the statute?

On behalf of the appellant it is urged that we should give to this phrase the meaning which it had in the minds of its original framers in 1790 and that it was employed by them for the sole purpose of excluding the black or African race and the Indians then inhabiting this country. It may be true that these races were alone thought of as being excluded, but to say that they were the only ones within the intent of the statute would be to ignore the affirmative form of the legislation. The provision is not that Negroes and Indians shall be excluded, but it is in effect, that only free white persons shall be included. The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges. As said by Chief Justice Marshall in Dartmouth College *v.* Woodward, 4 Wheat. 518, 644, in deciding a question of constitutional construction: "It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people, when it was adopted. It is necessary to go further and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction, so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in marking it an exception." If it be assumed that the opinion of the framers was that the only persons who would fall outside the designation "white" were Negroes and Indians, this would go no farther than to demonstrate their lack of sufficient information to enable them to foresee precisely who would be excluded by that term in the subsequent administration of the statute. It is not important in construing their words to consider the extent of their ethnological knowledge or whether they thought that under the statute the only persons who would be denied naturalization would be Negroes and Indians. It is sufficient to ascertain whom they intended to include and having ascertained that it follows, as a necessary corollary, that all others are to be excluded.[78]

While this case was not decided until November 13, 1922, the provisions of Section 2169 afforded in the opinion of those confronted with the Japanese problem in California, a logical basis upon which they could draft a law excluding persons ineligible for citizenship from ownership of the land within the state. It is through this circumstance that the Legislature of California embodied in their legislation, this basic principle which gave rise to bitter protest on

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[77] That Congress was conscious of the menace of an Oriental migration at the time the revision of the statutes was under consideration is shown by the following quotations from the debate of 1870:

"Mr. STEWART. * * * Because we have protected our own citizens and given them their rights, because we have freed the slaves and then given them their civil and political rights, does it follow that we must extend those political rights to all people throughout the globe, whether they will accept them or not? Why, sir, it would render American citizenship a farce. * * * The people coming here from Europe are of our own race. They have had struggles there for liberty. They have heard of free institutions from their earliest childhood and yet even some of them have difficulty in comprehending the situation here. * * * But how is it with these Asiatics? They have another civilization at war with ours; a language which we shall never understand—a language which is more arbitrary and difficult than any other spoken language. * * *

"Mr. WILLIAMS. * * * Elements that will not coalesce with the other elements of our population and form together a national entity are dangerous to the peace and integrity of this nation. Mongolians, no matter how long they may stay in the United States, will never lose their identity as a peculiar and separate people. They never will amalgamate with persons of European descent. * * *" Congressional Globe, 1869–70, second session, Forty-first Congress, pages 5152 and 5156.

Somewhat similar but less extended remarks were made in the Senate during the session of 1875.—Author.

[78] See Appendix D of this paper for whole decision.

the part of the government of Japan, on the ground that such enactment would be an unjust discrimination, and a violation of the Treaty of 1911. Despite a vigorous effort made on the part of the Federal Government, to induce the California Legislature to abandon this project, the situation in that state became so acute and popular passions became so aroused that finally the first land law was passed in 1913. In fact, although Mr. Bryan, then Secretary of State, had by direction of President Wilson gone to California, and with the consent of the Legislature, presented the views of the administration respecting possible violations of the Treaty of 1911, in the proposed legislation dealing with alien ownership in lands, he, nevertheless, when the final draft of the law was adopted took a firm stand that the statute did not contravene our treaty with Japan. In his reply to the objections raised by the Japanese Ambassador, Mr. Bryan said:

> This treaty was based upon a draft presented by the Imperial Government. In article I of this draft there is found the following clause: "3. They (the citizens or subjects of the contracting parties) shall be permitted to own or hire and occupy the houses, manufactories, warehouses, shops and premises which may be necessary for them and to lease land for residential, commercial, industrial, manufacturing and other lawful purposes."
>
> It will be observed that in this clause, which was intended to deal with the subject of real property, there is no reference to the ownership of land. The reason of this omission is understood to be that the Imperial Government desired to avoid treaty engagements concerning the ownership of land by foreigners and to regulate the matter wholly by domestic legislation.
>
> In the treaty as signed the rights of the citizens and subjects of the contracting parties with reference to real property were specifically dealt with (article I) in the stipulation that they should have liberty "to own or lease and occupy houses, manufactories, warehouses and shops" and "to lease land for residential and commercial purposes." It thus appears that the reciprocal right to lease land was confined to "residential and commercial purposes," and that the phrases "industrial" and "other lawful purposes," which would have included the leasing of agricultural lands, were omitted.
>
> The question of the ownership of land was, in pursuance of the desire of the Japanese Government, dealt with by an exchange of notes in which it was acknowledged and agreed that this question should be regulated in each country by the local law and that the law applicable in the United States in this regard was that of the respective states. This clearly appears from the note of Baron Uchida to Mr. Knox of February 21, 1911, in which in reply to an inquiry of the latter on the subject, Baron Uchida said: "In return for the rights of land ownership which are granted Japanese by the laws of the various states of the United States (of which, I may observe there are now about thirty) the Imperial Government will by liberal interpretation of the law be prepared to grant land ownership to American citizens from all the states, *reserving for the future, however, the right of maintaining the condition of reciprocity with respect to the separate states.*"
>
> In quoting the foregoing passage I have italicized the last clause for the purpose of calling special attention to the fact that the contracting parties distinctly understood that, in conformity with the express declaration of the Imperial Japanese Ambassador, the right was reserved to maintain as to land ownership the condition of reciprocity in the sense that citizens of the United States, coming from states in which Japanese might not be permitted to own land, were to be excluded from the reciprocal privilege in Japan.
>
> From what has been pointed out it appears to result, first, that the California Statute, in extending to aliens not eligible to citizenship of the United States right to lease lands in that state for agricultural purposes for a term not exceeding three years, may be held to go beyond the measure of privilege established in the treaty, which does not grant the right to lease agricultural lands at all; and, secondly, so far as the statute may abridge the right of such aliens to own lands within the states the right has been reserved by the Imperial Government to act upon the principle of exact reciprocity

with respect to citizens of the individual states. In a word, the measure of privilege and the measure of satisfaction for its denial were perfectly understood and accepted.[79]

It soon became apparent, however, that the California Land Law of 1913 was inadequate and that it was being flagrantly evaded with the natural result that a more comprehensive and carefully drawn initiative measure was presented to the people of the state and passed by an overwhelming majority. The situation in the state of Washington being in all essential respects identical with that existing in California, a somewhat similar law based upon Section 33 of Article II of the Constitution of the State, prohibiting the ownership of lands by aliens other than those who in good faith declared their intention to become citizens of the United States, was enacted in 1921. A suit was brought by the Terraces, citizens of the United States and of Washington, to restrain Attorney General Thompson of the State of Washington from enforcing this statute on the ground that it was in conflict with the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and also on the ground that it was in violation of the treaty between the United States and Japan. The act provides in substance "that any such alien shall not own, take, have, or hold the legal or equitable title, or right to any benefit of any land as defined in the act, and that land conveyed to or for the use of aliens in violation of the state Constitution or of the act shall thereby be forfeited to the state. And it is made a gross misdemeanor, punishable by fine or imprisonment or both, knowingly to transfer land or the right to the control, possession, or use of land to such an alien. It is also made a gross misdemeanor for any such alien having title to such land or the control, possession or use thereof, to refuse to disclose to the Attorney General or the prosecuting attorney the nature and extent of his interest in the land. The Attorney General and the prosecuting attorneys of the several counties are charged with the enforcement of the act."[80]

Mr. Justice Butler after reviewing the facts and dealing with some phases of the case not pertinent to matters we have under consideration, said:

* * * By the common law, an alien can not acquire real property by operation of law, but may take it by act of the grantor, and hold it until office found; that is until the fact of alienage is authoritatively established by a public officer, upon an inquest held at the instance of the government.

State legislation applying alike and equally to all aliens, withholding from them the right to own land, can not be said to be capricious, or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause.

This brings us to a consideration of appellants' contention that the act contravenes the equal protection clause. That clause secures equal protection to all in the enjoyment of their rights under like circumstances. In re Kemmler, Supra; Giozza *v.* Tiernan, 148 U. S. 657, 662. But this does not forbid every distinction in the law of a State between citizens and aliens resident therein. In Truax *v.* Corrigan, 257 U. S. 312, this Court said (p. 337):

"In adjusting legislation to the need of the people of a state, the legislature has a wide discretion and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable, that classification of

[79] Letter of William Jennings Bryan to Viscount Chinda, July 16, 1913. Federal Reporter, vol. 274, pages 844 and 845, Terrace *v.* Thompson.
[80] See Appendix D of this paper.

persons is constantly necessary. * * * Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things, and persons, and class them in accordance with their pertinence to the purpose in hand."

The rights, privileges and duties of aliens differ widely from those of citizens; and those of alien declarants differ substantially from those of nondeclarants. Formerly in many of the states the right to vote and hold office was extended to declarants, and many important offices have been held by them. But these rights have not been granted to nondeclarants. By various acts of Congress, declarants have been made liable to military duty, but no act has imposed that duty on nondeclarants. The fourth paragraph of Article I of the treaty invoked by the appellants, provides that the citizens or subjects of each shall be exempt in the territories of the other from compulsory military service either on land or sea, in the regular forces, or in the national guard, or in the militia; also from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions. The aliens formerly declared bona fide intention to renounce forever all allegiance and fidelity to the sovereignty to which he lately has been a subject, and to become a citizen of the United States and permanently to reside therein markedly distinguishes him from an ineligible alien or an eligible alien who has not so declared.

By the statute in question all aliens who have not in good faith declared intention to become citizens of the United States, as specified in Section I (a) are called "aliens" and it is provided that they shall not "own" "land," as defined in clauses (d) and (b) of Section I, respectively. The class so created includes all, but is not limited to aliens not eligible to become citizens. Eligible aliens who have not declared their intention to become citizens are included, and the act provides that unless declarants be admitted to citizenship within seven years after the declaration is made, bad faith will be presumed. This leaves the class permitted so to own land made up of citizens and aliens who may, and who intend to, become citizens, and who in good faith have made the declaration required by the immigration laws. The inclusion of good faith declarants in the same class with citizens does not unjustly discriminate against aliens who are ineligible, or against eligible aliens who have failed to declare their intention. The classification is based on eligibility and on purpose to naturalize. Eligible aliens are free white persons and persons of African nativity or descent. Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any ground or without any reason, as it sees fit. But it is not to be supposed that its acts defining eligibility are arbitrary or unsupported by reasonable considerations of public policy. The state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable. Generally speaking, the natives of European countries are eligible. Japanese, Chinese, and Malays are not. Appellant's contention that the state act discriminates arbitrarily against Nakatsuka and other ineligible aliens because of their race and color is without foundation. All persons of whatever color or race who have not declared their intention in good faith to become citizens are prohibited from so owning agricultural lands. Two classes of aliens inevitably result from the Naturalization Laws—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act. We agree with the Court below (274 Fed. 841, 849) that—

"It is obvious that one who is not a citizen and can not become one lacks an interest in, and the power to effectually work for the welfare of, the State, and, so lacking, the State may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens."

And we think it is clearly within the power of the State to include nondeclarants eligible aliens and ineligible aliens in the same prohibited class. Reasons supporting discrimination against aliens who may, but who will not naturalize, are obvious.

* * * * * * *

3. The State act, in our opinion, is not in conflict with the treaty between the United States and Japan. The preamble declares it to be "a treaty of commerce and navigation," and indicates that it was entered into for the purpose of establishing the rules to govern commercial intercourse between the countries.

The only provision that relates to owning or leasing land is in the first paragraph of Article I, which is as follows:

"The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other, to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established."

For the purpose of bringing Nakatsuka within the protection of the treaty, the amended complaint alleges that, in addition to being a capable farmer, he is engaged in the business of trading, wholesale and retail, in farm products, and shipping the same in intrastate, interstate, and foreign commerce, and, instead of purchasing such farm products, he has produced, and desires to continue to produce, his own farm products, for the purpose of selling them in such wholesale and retail trade; and if he is prevented from leasing land for the purpose of producing farm products for such trade, he will be prevented from engaging in trade and the incidents to trade, as he is authorized to do under the treaty.

To prevail on this point, appellants must show conflict between the state act and the treaty. Each state, in the absence of any treaty provision conferring the right, may enact laws prohibiting aliens from owning land within its borders. Unless the right to own or lease land is given by the treaty, no question of conflict can arise. We think that the treaty not only contains no provision giving Japanese the right to own or lease land for agricultural purposes, but, when viewed in the light of the negotiations leading up to its consummation, the language shows that the high contracting parties respectively intended to withhold a treaty grant of that right to the citizens or subjects of either in the territories of the other. The right to "carry on trade" or "to own or lease and occupy houses, manufactories, warehouses, and shops" or "to lease land for residential and commercial purposes," or "to do anything incident to or necessary for trade," can not be said to include the right to own or lease, or to have any title to or interest in, land for agricultural purposes. The enumeration of rights to own or lease for other specified purposes impliedly negatives the right to own or lease land for these purposes. A careful reading of the treaty suffices, in our opinion, to negative the claim asserted by appellants that it conflicts with the state act.

But, if the language left the meaning of its provisions doubtful or obscure, the circumstances of the making of the treaty, as set forth in the opinion of the District Court (Supra, 844, 845), would resolve all doubts against the appellants' contention. The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, in accordance with the desire of Japan, the right to own land was not conferred. And it appears that the right to lease land for other than residential and commercial purposes was deliberately withheld by substituting the words of the treaty, "to lease land for residential and commercial purposes" for a more comprehensive clause contained in an earlier draft of the instrument, namely, "to lease land for residential, commercial, industrial, manufacturing, and other lawful purposes * * *."[81]

The case of Porterfield *v.* Webb, Attorney General of the State of California, was brought on similar grounds to that of Terrace *v.* Thompson, which has been summarized above, the only material distinction being that in the Washington case, the classes of persons prohibited from owning land were broader in their scope; in California, the only element denied the privilege of owning land being aliens ineligible to citizenship, a circumstance which in no way, in the opinion of the Court, impaired the constitutionality of the statute.

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[81] See Appendix D of this paper for whole decision.

We may conclude from a consideration of the decisions, which have been summarized, or from which extracts have been quoted, in the preceding paragraphs, that the provisions of Section 2169 of the Revised Statutes, excluding all persons not being aliens who are free white persons or persons of African nativity or African descent, apply specifically to persons of the Japanese race, not born within the territory of the United States, and that the provisions of this section form a sane and legal basis for the exclusion of any person not comprised within the classes specifically referred to in Section 2169, from the ownership of land in any state which may see fit to so provide by statute. It, therefore, only remains for us to consider briefly the aspect of this question from the standpoint of international law, as distinct from the interpretation of Section 2169 by our domestic tribunals in so far as they relate to naturalization and the ownership of land.

It is incontestable that every state has the right to determine the conditions under which persons commence or cease to belong to the people of the country which that state represents.[82] Upon this point Oppenheim, the well known English authority, has this to say:

> It is not for International but for Municipal Law to determine who is and who is not to be considered a subject. And therefore it matters not, as far as the Law of Nations is concerned, that Municipal Laws may distinguish between different kinds of subjects—for instance, those who enjoy full political rights and are on that account named citizens, and those who are less favoured and are on that account not named citizens.[83]

This is a right too generally recognized to need discussion. It is inherent in the sovereignty of a state and an essential element of its independence. In the same way, Oppenheim says:

> It must be emphasized that, apart from general conventional arrangements, as, for instance, those concerning navigation on international rivers, and apart from special treaties of commerce, frindship, and the like, no State can claim the right for its subjects to enter into and reside on the territory of a foreign state. The reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy competent to exclude aliens from the whole or any part of its territory.[84]

The American people will do well to bear in mind that the government of Japan has availed itself of the right hereinbefore set forth in her own defense. Faced with a migration of Asiatic people, the government of Japan has refused admission to her own subjects inhabiting the dependencies of that Empire on the mainland of Asia, and in the Island of Formosa, as well as denying admission to the people of Siam, Malaya, Java and Hindustan.[85] In the month of August last, the Imperial Government failed to heed the seventh protest in two years, from the government of a kindred people, China, respecting discrimination against its nationals and their exclusion from the islands of Japan. We recognize the justice both in law, and as a matter of policy, of the attitude assumed by our friends across the Pacific, because it is essential to the maintenance of their economic standards and national integrity. On precisely the same

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[82] Cf. "Le Droit International," Charles Calvo, Vol. IV, fifth edition, section 541, page 25; section 580, page 72, and section 649, page 141.
[83] International Law, Oppenheim, Volume I, section 293, pages 369–370.
[84] International Law, Oppenheim, Volume I, section 314, page 391.
[85] Cf. Remarks of Senator Shortridge, Congressional Record, April 14, 1924, pages 6497–6498.

basis, we uphold the right to exclude the Japanese from the Pacific coast, or from any part of our territory. No question of national equality is involved. The recognition of Japan as an equal among the civilized states of the world is a matter of history. Her position as a great power is incontestable. If equality among races is measurable, we gladly concede it. Neither of these questions are in fact involved in our controversy respecting the admission of Japanese immigrants to settle upon our soil, although both of them are habitually raised in communications from the Imperial Government. The terms national and racial equality as used by the representatives of Japan are a challenge of the right of every sovereign state to control immigration into its territory in accordance with the public welfare. "The right of self-preservation," says Phillimore, "is the first law of nations, as it is of individuals. A society which is not in a condition to repel aggression from without, is wanting in its principal duty to the members of which it is composed, and to the chief end of its institutions. All means which do not affect the independence of other nations are lawful to this end. No nation has a right to prescribe to another what these means shall be, or to require any account of her conduct in this respect."[86] It is upon this proposition that the Congress of the United States has taken a proper and necessary stand, none too soon, to meet the menace of alien domination.

V. THE IMMIGRATION ACT OF 1924[87]

There can be no doubt that the considerations which have been set forth in the course of this discussion of our relations with Japan in respect to the immigration problem, constitute the basis for the embodiment in the Immigration Act of 1924, of Section 13, subsection (c), which reads as follows:

(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3.

When the exceptions to the exclusion provisions of this section are carefully examined, it will be observed that the substance and clear intent of the Gentlemen's Agreement are embodied in the statute; that is to say—

(1) an alien ineligible for citizenship previously lawfully admitted to the United States returning from a temporary visit abroad may be admitted; (2) an immigrant ineligible for citizenship who continuously, for at least two years immediately preceding the time of his application for admission to the United States, has been and is seeking to enter the United States solely for the purpose of carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary or university, and his wife and his unmarried children under 18 years of age if accompanying or following to join him, may be admitted; or (3) an immigrant ineligible for citizenship who is a bona fide student at least 15 years of age and seeks to enter the United States solely for the purpose of study at an accredited school, college, academy,

[86] Phillimore's International Law, Volume I, second edition, Section CCXI, page 252; Digest of International Law, Moore, Volume 4, page 155; Cf. "Le Droit International," Charles Calvo, Volume I, fifth edition, section 208, and first clause of section 209, pages 352–353.

[87] See Appendix F.

seminary or university, particularly designated by him and approved by the Secretary of Labor, may be admitted. These provisions are the exemptions provided for in sub-sections (b), (d) and (e) of Section 4. Finally, more important than these classes of persons is that group defined in sub-section (6) of Section 3 of the Act, which entitles Japanese or any of the people to whom the provisions of the section applies, who desire to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation, to admission at our ports.[88]

A careful consideration of the provisions described in the preceding paragraph makes it clear that the essential difference between the situation as it existed prior to the passage of the Immigration Act of 1924, and what may be expected to eventuate now that the law has gone into effect, lies in the fact that the United States Government will now determine the qualifications of any individual ineligible for citizenship seeking admission into the United States; that is to say, the responsbility for a determination of the eligibility and good faith of such persons to enter regardless of the country of their origin, will be determined by the American Consul at the point of departure for our shores, and by the Immigration Inspectors at the ports of entry of the United States.[89]

An interesting comment upon the practical operation of the Act is to be found in an article printed in the November 28th issue of Nichi-Bei, which reads as follows:

About four months have passed since the new American immigration law, which so aroused public opinion in the old country, went into effect. But the immigration law which at first was thought to be very severe has turned out to be very mild and smooth in its application. According to recent advices from the old country this new immigration law which seemed to be very severe proves to be such in regard to laborers only; but students, traders and members of mercantile houses find it even easier than under the gentlemen's agreement and are coming to America in large numbers. In the municipality of Tokyo alone upwards of six hundred students, officials and merchants have already come and the number throughout the entire country is said to be exceedingly large.

In the case of students who live in the interior all they have to do is to secure in advance permission for entering previously designated schools in America. In the case of mercantile houses it has become comparatively easy. Persons who are visiting America for purposes of observation or on business may remain six months, if necessary, the time can be extended.

But in the case of students, since it has been made obligatory upon the heads of the institutions attended by Japanese to report details with regard to attendance, graduation, etc. to the Secretary of Labor, the sons of rich men will not be permitted as hitherto merely to register in college for the amusement. Furthermore, the question how to deal with "ghost students" who never even show their faces at schools and a number of other riddles in connection with the new immigration law remains to be cleared up. "But," says Mr. Akamatsu, the chief of the Bureau of Emigration, "after all, in many respects going to America has become easier."[90]

While the article which has just been quoted gives the pleasant impression that friction respecting Japanese immigration is beginning to die down in Japan, unfortunately recent advices from the Pacific Coast indicate that a method has been evolved by which a resident Japanese seeking to import a Japanese wife may evade the provisions of the statute. The procedure is described in a statement recently issued by the California Joint Immigration Committee, which reads as follows:

The provision of the new immigration law excluding aliens ineligible to citizenship was intended to prevent, among other things, the continued entry

[88] Treaty proclaimed April 5, 1911.

[89] "An analysis of the American immigration act of 1924," by John B. Trevor, International Conciliation, Bulletin No. 202, p. 295.

[90] Nichi-Bei, November 28, 1924, "Increase of students and members of mercantile houses coming to America—600 from Tokyo alone since new immigration law took effect."

of new wives who did their part in increasing the Japanese population of the United States by becoming mothers of average families of five.

But the Japanese have already found a way to evade this intent of the law by sending over women as tourists who play the part of wives while here for the six months stay permitted as such tourists, then return to Japan, to come again next year or the year after as tourists. So in turn we had "picture" brides, then "Kankodan" brides, and now "tourist" brides. Doubtless the visits will be so timed that the children will be born here and thus acquire American citizenship.

The following translation of a Yokohama dispatch is from the Seattle Japanese newspaper, Taihoku Nippon, Nov. 5th, under the heading "Instead of Wives being sent for, Tourist Women coming to America increasingly:"

"Since the new American immigration law went into effect last July the Japanese in America have been absolutely unable to take their families with them to America. And so they have been carefully studying the matter and as a result have discovered that there is a provision of the law under which women of proper character may visit America as tourists. Recently mates for Japanese in America, under the name of tourists, have been appearing one after another, expecting to spend six months or a year in America. The other day the Shosen Kaisha SS Company's Arabia Maru took an excursion party of nine women of this class. When the fixed period of their stay in America ends these women will leave their husbands and return to Japan to await opportunity to return to America again. From now on this class of women will be going back and forth across the Pacific in considerable numbers."

It is difficult to say at this moment, whether it will be possible to deal adequately with a situation such as has been described through close scrutiny respecting the good faith of applicants for visés under the provisions exempting tourists from the quota. In all probability, however, evasions along this line will be confined to the entry of women seeking to marry foreign born Japanese, resident of the United States, not entitled to bring in their families under the various exemptions enumerated in the statute, because under a recent decision of the District Court of Massachusetts,[91] it is held that a woman falling within the category of persons ineligible for citizenship, if the wife of an American citizen, is not deportable; that is to say, assuming this decision represents the law, it would appear that persons of the Japanese race born in the United States, and citizens thereof under our laws, may import brides from Japan under the Kankodan system[92] in vogue during the latter part of the period in which the Gentlemen's Agreement was in force.

Referring to the decision of Judge Lowell, in the case of Chiu Shee, Judge Kerrigan in deciding two cases brought before the United States District Court of San Francisco, said:

* * * The discrepancy between section 4 (a) and section 13 (c) can be reconciled by construing the latter as applying only to aliens who are not the wives of American citizens.

I conclude, therefore, that it would have been the duty of the respondent in the case now under consideration to permit the petitioners to enter if their husbands, being citizens of the United States, had complied with the provisions of section 9, subdivisions (b), (c) and (d), of the act by filing with the commissioner general the petition therein specified, resulting in the issuance to said petitioners of an immigration visé by the consular officer to whom application therefor had been made. But as it appears that no such proceedings were

[91] In re Chiu Shee, opinion by Judge J. Lowell, October 17, 1924. See Appendix D for full decision.

[92] The term "Kankodan brides" was applied to Japanese women brought into the United States by husbands, legally resident in this country, who went abroad in organized parties for the purpose of marriage, the Japanese Government having extended to such husbands, who were liable to military service under the conscription law of Japan, special exemptions for the purpose.

taken by or on behalf of the petitioners, they have not established their right to enter. The demurrer to the petition is therefore sustained.[93]

It is thus evident that in the cases which have so far arisen relating directly or indirectly, to the phase of the question which we have been discussing, the weight of judicial opinion is against the interpretation of the statute adopted by the Department of Labor. However this may be, the Attorney General has been requested to appeal from the decision rendered in the case of Chiu Shee, and, therefore, it is impossible until the Supreme Court passes upon the questions involved, to say whether or not, that decision has opened a serious breach in the barriers erected by Congress against an influx of Oriental immigration.

Having reviewed in the preceding paragraph, the substance of the exclusion provisions of the Act of 1924, and the interpretation of the scope of the section relating to the entry of persons ineligible to citizenship, in so far as the courts have passed upon that matter, it behooves us now to consider the international reaction created by the passage of the Act. It is perfectly clear, as has already been pointed out, that from the standpoint of international law the control of immigration is a domestic question, but it is equally obvious that Japan is not alone in its contention that circumstances attending the settlement of a domestic issue may be a matter of international concern. In other words, we must recognize the fact that it is within the realm of possibility, in fact of probability, that some phase of the administration of an immigration act or other law, adopted by any nation bearing upon the treatment of nationals of a foreign state, domiciled abroad, will be challenged by some member of the League of Nations, and laid before that body for determination and adjustment. The following excerpt from a special cable to the New York Times, presents in vivid colors, a picture of the groundwork being laid for such a proceeding.

At 9:30 o'clock tonight, when the Arbitration Commission had practically completed its revision of the Protocol text, M. Adachi arose and formally moved the suppression of the clause in the Protocol draft which proclaims an aggressor State any country refusing to abide by the decision of the World Court of Justice. The clause in question refers to disputes which one party declares to have arisen over a subject which is exclusively within its domestic jurisdiction. If the World Court accepts this view and rules that the matter is in fact domestic in nature, and the other, the opposing State, refuses to accept the decision and goes to war, it then becomes an aggressor and will be punished as such by the other members of the League.

M. Adachi wanted this clause stricken out altogether, asserting that it involved great injustice to the plaintiff State and shut off all avenues of peaceful settlement. Reading his statement dramatically and slowly amid tense, almost painful, silence, the Japanese delegate accused the League of Nations of not fulfilling its high mission, because it was proclaiming a State criminal without offering any solution of the difficulty.

He argued that questions judged by the Court to be within the exclusive internal jurisdiction of a State might cause the gravest kind of injustice to the other State which should have the right to prove the righteousness of its complaint.[94]

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[93] Decision by Judge Kerrigan in the Southern Division of the District Court of the United States in and for the Northern District of California, Second Divison. No. 18516. In the matter of Cheung Sum Shee et al. on habeas corpus; and No. 18517. In the matter of Chan Shee et al. on habeas corpus.

[94] Dispatch dated September 28, 1924, from Geneva, published in New York Times, issue of September 29, under title of "Japanese imperil league peace plan by new demands."

Supplementing this digest of Mr. Adatci's remarks, is a statement made by a member of the Japanese delegation to a representative of the Associated Press,[94] which reads, with explanatory interpolations by the correspondent, as follows:

We are determined in our opposition to the Protocol as it now stands, because it puts Japan in a most unfavorable position. Japanese public opinion will never permit the Government to subscribe to a document which closes the door on us and virtually makes diplomatic negotiations impossible on subjects which the World Court decides are solely within the national jurisdiction of a state with which we have differences.

What we particularly object to is that Japan would be proclaimed immediately an aggressor State if she declined to abide by an arbitral decision which declared that the dispute had arisen out of a question domestic in nature. It is not only the question of immigration with the United States. When you consider how the Japanese are mistreated in South Africa, we are treated very well in the United States as a nation; for in South Africa the Japanese are even forbidden accommodations in hotels.

The immigration problem with the United States is serious, and has aroused the Japanese public but there is a vast variety of other problems affecting the Japanese which other nations might plead concern solely their national sovereignty, and hence are not subject to international arbitration. The Spanish-American War sprang out of the administration of Cuba. Tomorrow Japanese may be murdered by police in China and other countries, and the plea of State sovereignty can immediately be put forward as a reason for non-submission to arbitration.

Instead of accepting the Protocol which aggravates the stipulations of Paragraph 8, Article XV of the League Covenant, we would much rather stick by the Covenant without changing it, even if it does not completely satisfy us.

The speaker was referring to the Covenant clause which provides that if a dispute is found by the League Council to arise out of a matter which by international law is solely within the domestic jurisdiction of the State complained of, then the Council shall so report and shall make no recommendation as to its settlement. He continued:

That permits diplomatic negotiations; the Protocol prevents them. Yet diplomatic negotiations should be encouraged, not hindered. We merely want the Council of the League to continue its efforts at mediation, even when the World Court rules that a conflict is the outgrowth of a domestic question.

The Japanese spokesman concluded by saying that Japan was embarrassed because the United States would probably not be a signatory to the protocol, hence the Protocol would have no power as regards the United States.[95]

As a result of the opposition to the draft of the Protocol raised by Japan, and the support her delegation received from the representatives of certain European nations, possessed of a highly congested population and, therefore potential sources of an immigration movement, a revision of the Protocol was secured which appeared to be acceptable to Japan. In view of the fact that the stenographic record of the proceedings before the Committees and the Assembly of the League of Nations are not available, and the "Journal" is an arid source from which to derive information respecting this controversy, it is impossible to assert with precision, the attitude assumed in the course of the debate by the representatives of the various nations. In this connection, it may be well to recall that when the specific issue of race equality was raised in the course of the Peace

[95] In the course of a debate on the evening of September 29, it is interesting to note that Viscount Ishii charged that Mr. Lloyd George, while Premier, gave a solemn promise during the Peace Conference that Great Britain would aid Japan in securing race equality by a vote within the league at a later time if the Japanese Government would withdraw opposition to Article XV, paragraph 8, which was contrary to their interest. Lord Parmoor of the British delegation, denied knowledge of this pledge, and disclaimed responsibility for Mr. Lloyd George's activities in Paris. (Cf. dispatch dated September 29, 1924, from Geneva, published in New York Herald, issue of September 30, under title of "Japan forces issue for Asia; league offers concessions.")

Conference at Versailles, eleven out of seventeen votes cast, supported the Japanese contention. However, since the fate of the Geneva Protocol remains in doubt, and recent events abroad give but little ground for confidence that the great powers of Europe will prove amenable to the guidance of the League when issues which they regard as vital are at stake, it is useless to do more than lay before Congress and the American people, the following suggestions for consideration:

1. The interests of all European States, China and Japan, in respect to emigration and immigration are diametrially opposed to those of the United States and all immigrant receiving nations. Their population is congested, conditions of life are hard, and the margin between mere sufficiency and actual want is narrow—too often not apparent. On the other hand, in the Americas, North and South, Australia, New Zealand, and South Africa, population is relatively sparse, standards of living are high, and life holds out to the industrious not mere achievement of existence, but substantial rewards and possibilities of indefinite progressive development; therefore, emigration affords to the European States, China and Japan, not only temporary relief for congestion of population upon the land, and indirectly, a source from which a portion of the home population may derive support from the earnings of their relatives, but also, it affords an outlet for elements which rapidly merge downward into the classes technically described as socially inadequate, or, otherwise undesirable. Under these circumstances, it is inevitable that the interests of these nations will be reflected by their governments in the formulation of foreign policies. Most, if not all, of these States are members of the League of Nations.

2. Since it is one of the fundamental purposes of the League of Nations to secure a codification and restatement of international law, it is conceivable that either through gradual interpretation of international law, as evolved from controversies laid before the Permanent Court of International Justice, or through agreement and approval of a code by the League itself, domestic questions may be so defined as to materially curtail the rights of independent States in the administration of their affairs. The League constitutes the frame-work, fragile though it be, of a super-state, and in the discussion of the Peace Protocol at Geneva during the last session of the League, it became apparent that there was a strong "tendency to regard many so-called domestic problems as of international concern, and thus subject to international discussion for the good of all."[96] That is to say, while the great European and Oriental powers have found a ready means of evading obligations imposed upon them by the Covenant of the League, nevertheless, the machinery is in being for a consolidation of power against any nation which may decline to submit a controversy to arbitration, or refer it to the Permanent Court of International Justice. While it is true that the Geneva Protocol has not as yet been ratified, the circumstance that Article V gives the right of appeal to the League, from a decision of the Permanent Court of International Justice solely upon questions held to be within the domestic jurisdiction of a State, is

[96] Dispatch dated September 30, 1924, from Geneva, published in New York Herald, issue of October 1, under title of "Tokio accepts concessions by league on alien issue."

of such significance in relation to the problem we have had under consideration, that it cannot be disregarded.

3. The Permanent Court of International Justice, as now constituted, is an appendage of the League. It is inevitable, therefore, that it should reflect, in a measure, the political forces therein embodied. These forces, as have already been demonstrated, are not in accord with our ideas, or for that matter, our ideals. Therefore, before this agency, or the League itself, has occasion to interpret or modify the generally accepted rules of international law, respecting those questions which an independent sovereign state rightfully considers to be solely within its jurisdiction, we should consider, in concert with all nations within the sphere of the Monroe Doctrine, or elsewhere, when the interests of a body politic are in line with our own, all phases of the immigration problem, administrative and legal, in relation to the law of nations.

VI. CONCLUSION

The problem of Japanese exclusion has been reviewed in its varied aspects, not, from the standpoint that we are a mere aggregation of assorted peoples engaged in the economic exploitation of the area over which we have spread, but from the standpoint that this Republic represents an ideal, based upon the conception that we are a nation—a nation evolved from the genius of those races from which the vast majority of the people are derived. Therefore, it is obvious that it is upon the merging and assimination in blood, as in ideals, that the success of this democratic experiment must ultimately depend. It has been demonstrated by the testimony of eminent authorities that cultural and biological assimilation of a Mongolian people is impossible. The Japanese are not only a Mongolian people, but represent the highest development of civilization and power of the people of all Asia. The close connection between the settlers from the island empire, migrating to our shores, and the official representatives of the Japanese Government, has been laid before Congress by the Committee on Immigration of the House in the record of its investigations on the Pacific Coast in 1920. Consideration has been given to the efforts made by our government to arrive at a solution of the problem of Japanese immigration through diplomatic channels. Although our efforts in this direction extended to a virtual cession of sovereignty, the evasion of the spirit of our agreement with Japan on the part of its officials, rendered impossible a continuation of an agreement along these lines. For one hundred and thirty years, it has been the policy of our nation to restrict the privileges of citizenship to those elements of the world population embodied in our social structure since the foundation of the Republic. This is known to all the world, and it would seem that no government of any people has a right to allege a discrimination against its nationals, where the fact is incontestable that the policy upon which exclusion is based, was adopted almost a century before contact took place between our respective nations.

APPENDIX A

TEXTS OF NOTES EXCHANGED BETWEEN THE GOVERNMENTS OF JAPAN AND OF THE UNITED STATES

1].

JAPANESE EMBASSY,
Washington, April 10, 1924.

Honorable CHARLES E. HUGHES, *Secretary of State.*

SIR: In view of certain statements in the report of the House Committee on Immigration—Report 350, March 24, 1924—regarding the so-called gentlemen's agreement, some of which appear to be misleading, I may be allowed to state to you the purpose and substance of that agreement as it is understood and performed by my Government, which understanding and practice, are, I believe, in accord with those of your Government on this subject.

The gentlemen's agreement is an understanding with the United States Government by which the Japanese Government voluntarily undertook to adopt and enforce certain administrative measures designed to check the emigration to the United States of Japanese laborers. It is in no way intended as a restriction on the sovereign right of the United States to regulate its immigration. This is shown by the fact that the existing immigration act of 1917, for instance, is applied to Japanese as to other aliens.

It was because of the fact that discriminatory immigration legislation on the part of the United States would naturally wound the national susceptibilities of the Japanese people that, after thorough but most friendly and frank discussions between the two Governments, the gentlemen's agreement was made for the purpose of relieving the United States from the possible unfortunate necessity of offending the natural pride of a friendly nation.

The Japanese Government have most scrupulously and faithfully carried out the terms of the agreement, as a self-imposed restriction, and are fully prepared to continue to do so, as officially announced at the time of the conclusion of the present treaty of commerce and navigation between Japan and the United States. In return the Japanese Government confidently trust that the United States Government will recommend, if necessary, to the Congress to refrain from resorting to a measure that would seriously wound the proper susceptibilities of the Japanese nation.

One object of the gentlemen's agreement is, as is pointed out above, to stop the emigration to the United States of all Japanese laborers other than those excepted in the agreement, which is embodied in a series of long and detailed correspondence between the two Governments, publication of which is not believed to serve any good purpose, but the essential terms and practice of which may be summed up as follows:

(1) The Japanese Government will not issue passports good for the continental United States to laborers, skilled or unskilled, except those previously domiciled in the United States, or parents, wives, or children under 20 years of age of such persons. The form of the passport is so designed as to omit no safeguard against forgery, and its issuance is governed by various rules of detail in order to prevent fraud.

The Japanese Government accepted the definition of "laborer" as given in the United States Executive order of April 8, 1907.

(2) Passports are to be issued by a limited number of specially authorized officials only, under close supervision of the foreign office, which has the supreme control of the matter and is equipped with the necessary staff for the administration of it. These officials shall make thorough investigation when application for passports is made by students, merchants, tourists, or the like, to ascertain whether the applicant is likely to become a laborer, and shall enforce the requirement that such person shall either be supplied with adequate means to insure the permanence of his status as such or that surety be given therefor. In case of any doubt as to whether such applicant is or is not entitled to a passport, the matter shall be referred to the foreign office for decision.

Passports to laborers previously domiciled in the United States will be issued only upon production of certificate from Japanese consular officers in the United

States, and passports to the parents, wives and children of such laborers will be issued only upon production of such consular certificate and of duly certified copy of official registry of members of such laborer's family in Japan. Utmost circumspection is exercised to guard against fraud.

(3) Issuance of passports to so-called "picture brides" has been stopped by the Japanese Government since March 1, 1920, although it has not been prohibited under the terms of the gentlemen's agreement.

(4) Monthly statistics covering incoming and outgoing Japanese are exchanged between the American and Japanese Governments.

(5) Although the gentlemen's agreement is not applicable to the Hawaiian Islands, measures restricting issuance of passports for the islands are being enforced in substantially the same manner as those for the continental United States.

(6) The Japanese Government are further exercising strict control over emigration of Japanese laborers to foreign territories contiguous to the United States in order to prevent their surreptitious entry into the United States.

A more condensed substance of these terms is published in the annual report of the United States Commissioner General of Immigration for 1908, 1909, and 1910, on pages 125–126, 121, and 124–125, respectively.

As I stated above, the Japanese Government have been most faithfully observing the gentlemen's agreement in every detail of its terms, which fact is, I believe, well known to the United States Government. I may be permitted, in this connection, to call your attention to the official figures published in the annual reports of the United States Commissioner General of Immigration, showing the increase or decrease of Japanese population in the continental United States by immigration and emigration. According to these reports, in the years 1908–1923, the total numbers of Japanese admitted to and departed from the continental United States were, respectively, 120,317 and 111,636. In other words, the excess of those admitted over those departed was in 15 years only 8,681; that is to say, the annual average of 578. It is important to note that in these 8,681 are included not only those who are covered by the terms of the gentlemen's agreement but all other classes of Japanese, such as merchants, students, tourists, Government officials, etc. These figures, collected by the United States immigration authorities, seem to me to show conclusively the successful operation of the gentlemen's agreement. Besides this there is, of course, the increase through birth of the Japanese population in the United States. This has nothing to do with either the gentlemen's agreement or the immigration laws.

I may add, in this connection, that if the proposition were whether it would not be desirable to amend or modify some of the terms of the agreement, the question would be different, and I personally believe that my Government would not be unwilling to discuss the matter with your Government, if such were its wishes.

Further, if I may speak frankly, at the risk of repealing what, under instructions from my Government, I have represented to you on former occasions, the mere fact that a certain clause, obviously aimed against Japanese as a nation, is introduced in the proposed immigration bill, in apparent disregard of the most sincere and friendly endeavors on the part of the Japanese Government to meet the needs and wishes of the American Government and people, is mortifying enough to the Government and people of Japan. They are, however, exercising the utmost forbearance at this moment, and in so doing they confidently rely upon the high sense of justice and fair play of the American Government and people which, when properly approached, will readily understand why no such discriminatory provision as above referred to should be allowed to become a part of the law of the land.

It is needless to add that it is not the intention of the Japanese Government to question the sovereign right of any country to regulate immigration to its own territories. Nor is it their desire to send their nationals to the countries where they are not wanted. On the contrary, the Japanese Government showed from the very beginning of this problem their perfect willingness to cooperate with the United States Government to effectively prevent by all honorable means the entrance into the United States of such Japanese nationals as are not desired by the United States, and have given ample evidences thereof, the facts of which are well known to your Government. To Japan the question is not one of expediency but of principle. To her the mere fact that a few hundreds or thousands of her nationals will or will not be admitted into the domains of other countries is immaterial, so long as no question of national

susceptibilities is involved. The important question is whether Japan as a nation is or is not entitled to the proper respect and consideration of other nations. In other words, the Japanese Government asks of the United States Government simply that proper consideration ordinarily given by one nation to the self-respect of another, which after all forms the basis of amicable international intercourse throughout the civilized world.

It is indeed impossible for any Government and people, and I believe it would be impossible also for your Government and for those of your people who had made a careful study of the subject, to understand why it should be necessary for your country to enact as the law of the land such a clause as section 12(b) of the House immigration bill.

As is justly pointed out in your letter of February 8, 1924, to the chairman of the House Committee on Immigration, it is idle to insist that the provision is not aimed at the Japanese, for the proposed measure (section 25) continues in force your existing legislation regulating Chinese immigration and the barred-zone provisions of your immigration laws which prohibit immigration from certain other portions of Asia—to say nothing about the public statements of the sponsors and supporters of that particular provision as to its aim. In other words, the manifest object of the said section 12(b) is to single out Japanese as a nation, stigmatizing them as unworthy and undesirable in the eyes of the American people. And yet the actual result of that particular provision, if the proposed bill becomes the law as intended, would be to exclude only 146 Japanese per year. On the other hand, the gentlemen's agreement is, in fact, accomplishing all that can be accomplished by the proposed Japanese exclusion clause except for those 146. It is indeed difficult to believe that it can be the intention of the people of your great country, who always stand for high principles of justice and fair play in the intercourse of nations, to resort, in order to secure the annual exclusion of 146 Japanese, to a measure which would not only seriously offend the just pride of a friendly nation, that has been always earnest and diligent in its efforts to preserve the friendship of your people, but would also seem to involve the question of the good faith and therefore of the honor of their Government, or at least of its executive branch.

Relying upon the confidence you have been good enough to show me at all times, I have stated, or rather repeated, all this to you very candidly and in a most friendly spirit, for I realize, as I believe you do, the grave consequences which the enactment of the measure retaining that particular provision would inevitably bring upon the otherwise happy and mutually advantageous relations between our two countries.

Accept, sir, the renewed assurances of my highest consideration.

M. HANIHARA.

2] DEPARTMENT OF STATE,
Washington, April 10, 1924.

His Excellency Mr. MASANAO HANIHARA,
Japanese Ambassador.

EXCELLENCY: I have the honor to acknowledge the receipt of the note of April 10, in which, referring to the recent report of the Committee on Immigration and Naturalization of the House of Representatives (Report No. 350, March 24, 1924) you took occasion to state your Government's understanding of the purport of the so-called "gentlemen's agreement" and your Government's practice and purposes with respect to emigration from Japan to this country.

I am happy to take note of your statement concerning the substance of the so-called "gentlemen's agreement" resulting from the correspondence which took place between our two Governments in 1907–8, as modified by the additional undertaking of the Japanese Government with regard to the so-called "picture brides" which became effective four years ago. Your statement of the essential points constituting the "gentlemen's agreement" corresponds with my own understanding of that arrangement.

Inasmuch as your note is directed toward clearing away any possible misapprehension as to the nature and purpose of the "gentlemen's agreement," I am taking occasion to communicate copies of it, as also of my present reply, to the chairmen of the appropriate committees of the two Houses of Congress.

Accept, Excellency, the renewed assurance of my highest consideration.

CHARLES E. HUGHES.

3] JAPANESE EMBASSY,
Washington, April 17, 1924.

MY DEAR MR. SECRETARY: In reading the Congressional Record of April 14, 1924, I find that the letter I addressed to you on April 10, a copy of which you sent to the chairman of the Senate Committee on Immigration, was made a subject of discussion in the Senate. In the Record it is reported that some of the Senators expressed the opinion, which was apparently accepted by many other members of that body, that my letter contained "a veiled threat." As it appears from the Record that it is the phrase "grave consequences", which I used in the concluding part of my letter that some of the Senators construed as "a veiled threat", I may be permitted to quote here full text of the sentence which contained the words in question:

"Relying upon the confidence you have been good enough to show me at all times, I have stated or rather repeated all this to you very candidly and in a most friendly spirit, for I realize, as I believe you do, the grave consequences which the enactment of the measure retaining that particular provision would inevitably bring upon the otherwise happy and mutually advantageous relations between our two countries."

Frankly, I must say I am unable to understand how the two words, read in their context, could be construed as meaning anything like a threat. I simply tried to emphasize the most unfortunate and deplorable effect upon our traditional friendship which might result from the adoption of a particular clause in the proposed measure. It would seriously impair the good and mutually helpful relationship and disturb the spirit of mutual regard and confidence which characterizes our intercourse of the last three-quarters of a century and which was considerably strengthened by the Washington conference as well as by the most magnanimous sympathy shown by your people in the recent calamity in my country. Whereas there is otherwise every promise of hearty cooperation between Japan and the United States, which is believed to be essential to the welfare not only of themselves, but of the rest of the world, it would create, or at least tend to create, an unhappy atmosphere of ill feeling and misgiving over the relations between our two countries.

As the representative of my country, whose supreme duty is to maintain and if possible to draw still closer the bond of friendship so happily existing between our two peoples, I honestly believe such effects, as I have described, to be "grave consequences". In using these words, which I did quite ingeniously, I had no thought of being in any way disagreeable or discourteous, and still less of conveying "a veiled threat". On the contrary, it was in a spirit of the most sincere respect, confidence, and candor that I used these words, which spirit I hope is manifest throughout my entire letter, for it was in that spirit that I wrote you. I never suspected that these words, used as I used them, would ever afford an occasion for such comment or interpretation as have been given them.

You know, I am sure, that nothing could be further from my thoughts than to give cause for offence to your people or their Government, and I have not the slightest doubt that you have no such misunderstanding as to either the spirit in which I wrote the letter in question to you or the meaning I intended for the phrase that I used therein.

In view, however, of what has transpired in the course of the public discussion in the Senate, I feel constrained to write you, as a matter of record, that I did not use the phrase in question in such a sense as has been attributed to it.

I am, my dear Mr. Secretary,
Yours very truly,

M. HANIHARA.

Honorable CHARLES E. HUGHES,
Secretary of State.

4] DEPARTMENT OF STATE,
Washington, April 18, 1924.

MY DEAR MR. AMBASSADOR: I am gratified to receive your letter of the seventeenth instant with your frank and friendly explanation of the intent of your recent note in relation to the pending immigration bill. It gives me pleasure to be able to assure you that reading the words "grave consequences" in the light of their context, and knowing the spirit of friendship and under-

standing you have always manifested in our long association, I had no doubt that these words were to be taken in the sense you have stated, and I was quite sure that it was far from your thought to express or imply any threat. I am happy to add that I have deeply appreciated your constant desire to promote the most cordial relations between the peoples of the two countries.

With high esteem, I am, my dear Mr. Hanihara,

Very sincerely yours,

CHARLES E. HUGHES.

His Excellency, Mr. MASANAO HANIHARA,
Ambassador of Japan, Washington, D. C.

5] JAPANESE EMBASSY,
Washington, May 31, 1924.

Honorable CHARLES E. HUGHES,
Secretary of State.

SIR: In pursuance of instructions from my Government, I have the honor to present to you herewith a memorandum enunciating the position of Japan on the subject of the discriminatory provisions against Japanese which are embodied in section 13 (c) of the immigration act of 1924, approved May 26, 1924.

MEMORANDUM

"The Japanese Government are deeply concerned by the enactment in the United States of an act entitled the 'Immigration act of 1924.' While the measure was under discussion in the Congress they took the earliest opportunity to invite the attention of the American Government to a discriminatory clause embodied in the act, namely, section 13 (c), which provided for the exclusion of aliens ineligible to citizenship in contradistinction to other classes of aliens, and which is manifestly intended to apply to Japanese. Neither the representations of the Japanese Government nor the recommendations of the President or of the Secretary of State were heeded by the Congress, and the clause in question has now been written into the statutes of the United States.

"It is, perhaps, needless to state that international discriminations in any form and on any subject, even if based on purely economic reasons, are opposed to the principles of justice and fairness upon which the friendly intercourse between nations must, in its final analysis, depend. To these very principles the doctrine of equal opportunity, now widely recognized, with the unfailing support of the United States, owes its being. Still more unwelcome are discriminations based on race. The strong condemnation of such practice evidently inspired the American Government in 1912 in denouncing the commercial treaty between the United States and Russia, pursuant to the resolution of the House of Representatives of December 13, 1911, as a protest against the unfair and unequal treatment of aliens of a particular race in Russia. Yet discriminations of a similar character is expressed by the new statute of the United States. The immigration act of 1924, considered in the light of the Supreme Court's interpretation of the naturalization laws, clearly establishes the rule that the admissibility of aliens to the United States rests not upon individual merits or qualifications but upon the division of race to which applicants belong. In particular it appears that such racial distinction in the act is directed essentially against Japanese, since persons of other Asiatic races are excluded under separate enactments of prior dates, as is pointed out in the published letter of the Secretary of State of February 8, 1924, to the chairman of the Committee on Immigration and Naturalization of the House of Representatives.

"It has been repeatedly asserted in defense of these discriminatory measures in the United States that persons of the Japanese race are not assimilable to American life and ideals. It will, however, be observed, in the first place, that few immigrants of a foreign stock may well be expected to assimilate themselves to their new surroundings within a single generation. The history of Japanese immigration to the United States in any appreciable number dated but from the last few years of the nineteenth century. The period of time is too short to permit of any conclusive judgment being passed upon the racial adaptabilities of those immigrants in the matter of assimilation, as compared with alien settlers of the races classed as eligible to American citizenship.

"It should further be remarked that the process of assimilation can thrive only in a genial atmosphere of just and equitable treatment. Its natural growth is bound to be hampered under such a pressure of invidious discriminations as that to which Japanese residents in some States of the American Union have been subjected, at law and in practice for nearly twenty years. It seems hardly fair to complain of the failure of foreign elements to merge in a community while the community chooses to keep them apart from the rest of its membership. For these reasons the assertion of Japanese non-assimilability seems at least premature, if not fundamentally unjust.

"Turning to the survey of commercial treaties between Japan and the United States, Article II of the treaty of 1894 contained a clause to the following effect:

"'It is, however, understood that the stipulations contained in this and the preceding article do not in any way affect the laws, ordinances and regulations with regard to trade, the immigration of laborers, police and public security which are in force or may hereafter be enacted in either of the two countries.'

"When the treaty was revised in 1911 this provisory clause was deleted from the new treaty at the request of the Japanese Government, retaining the general rule which assures the liberty of entry, travel, and residence; and, at the same time, the Japanese Government made the following declaration, dated February 21, 1911, which is attached to the treaty:

"'In proceeding this day to the signature of the treaty of commerce and navigation between Japan and the United States the undersigned Japanese ambassador in Washington, duly authorized by his Government, has the honor to declare that the Imperial Japanese Government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the past three years exercised in regulation of the emigration of laborers to the United States.'

"In proceeding to the exchange of ratifications of the revised treaty, the Acting Secretary of State communicated to the Japanese Ambassador on February 25, 1911, that 'the advice and consent of the Senate to the ratification of the treaty is given with the understanding, which is to be made part of the instrument of ratification, that the treaty shall not be deemed to repeal or affect any of the provisions of the act of Congress entitled "An act to regulate the immigration of aliens into the United States," approved February 20, 1907.' The Acting Secretary of State then added:

"'Inasmuch as this act applies to the immigration of aliens into the United States from all countries and makes no discrimination in favor of any country, it is not perceived that your Government will have any objection to the understanding being recorded in the instrument of ratification.'

"The foregoing history will show that throughout these negotiations, one of the chief preoccupations of the Japanese Government was to protect their nationals from discriminatory immigration legislation in the United States. That position of Japan was fully understood and appreciated by the American Government and it was with these considerations in view that the existing treaty was signed and the exchange of its ratification effected. In this situation, while reserving for another occasion the presentation of the question of legal technicality, Whether and how far the provisions of section 13 (c) of the immigration act of 1924 are inconsistent with the terms of the treaty of 1911, the Japanese Government desire now to point out that the new legislation is in entire disregard of the spirit and circumstances that underlie the conclusion of the treaty.

"With regard to the so-called gentlemen's agreement, it will be recalled that it was designed, on the one hand, to meet the actual requirements of the situation as perceived by the American Government, concerning Japanese immigration, and on the other, to provide against the possible demand in the United States for a statutory exclusion which would offend the just susceptibilities of the Japanese people. The arrangement came into force in 1908. Its efficiency has been proved in fact. The figures given in the annual report of the United States Commissioner General of Immigration authoritatively show that during the fifteen years from 1908 to 1923, the excess in number of Japanese admitted to continental United States over those who departed was no more than 8,681 all together, including not only immigrants of the laboring class, but also merchants, students and other non-laborers and non-immigrants, the numbers which naturally increased with the growth of commercial, intellectual and social relations between the two countries. If even so limited a number should in any way be found embarrassing to the United States, the

Japanese Government have already manifested their readiness to revise the existing arrangement with a view to further limitation of emigration.

"Unfortunately, however, the sweeping provisions of the new act, clearly indicative of discrimination against Japanese, have made it impossible for Japan to continue the undertakings assumed under the gentlemen's agreement. An understanding of friendly cooperation reached after long and comprehensive discussions between the Japanesee and American Governments has thus been abruptly overthrown by legislative action on the part of the United States. The patient, loyal and scrupulous observance by Japan for more than sixteen years of these self-denying regulations, in the interest of good relations between the two countries, now seems to have been wasted.

"It is not denied that, fundamentally speaking, it lies within the inherent sovereign power of each State to limit and control immigration to its own domains, but when, in the exercise of such right, an evident injustice is done to a foreign nation in disregard of its proper self-respect, of international understandings or of ordinary rules of comity, the question necessarily assumes an aspect which justifies diplomatic discussion and adjustment.

"Accordingly, the Japanese Government consider it their duty to maintain and to place on record their solemn protest against the discriminatory clause in section 13 (c) of the immigration act of 1924 and to request the American Government to take all possible and suitable measures for the removal of such discrimination."

I am instructed further to express the confidence that this communication will be received by the American Government in the same spirit of friendliness and candor in which it is made.

Accept, sir, the renewed assurances of my highest consideration.

(Signed) M. HANIHARA.

6] DEPARTMENT OF STATE,
Washington, June 16, 1924.

His Excellency, Mr. MASANAO HANIHARA,
Japanese Ambassador

EXCELLENCY: I have the honor to acknowledge the receipt of your note under date of May 31st containing a memorandum stating the position of the Japanese Government with respect to the provision of section 13 (c) of the immigration act of 1924. I take pleasure in noting your reference to the friendliness and candor in which your communication has been made and you may be assured of the readiness of this Government to consider in the same spirit the views you have set forth.

At the time of the signing of the immigration bill the President issued a statement, a copy of which I had the privilege of handing to you, gladly recognizing the fact that the enactment of this provision "does not imply any change in our sentiment of admiration and cordial friendship for the Japanese people, a sentiment which has had and will continue to have abundant manifestation." Permit me to state briefly the substance of the provision. Section 13 (c) related to all aliens ineligible to citizenship. It establishes certain exceptions, and to these classes the exclusion provision does not apply, to wit:

"Those who are not immigrants as defined in section 3 of the act, that is (1) a Government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation."

Those who are admissible as no-quota immigrants under the provisions of subdivisions (b), (d) or (e) of section four, that is "(b) an immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; (d) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary or university, and his

wife, and his unmarried children under 18 years of age, if accompanying or following to join him; or (e) an immigrant who is a bona fide student at least 15 years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such institution of learning fails to make such reports promptly the approval shall be withdrawn.

Also the wives or unmarried children under 18 years of age of immigrants admissible under subdivision (d) of section four, above quoted.

It will be thus observed that, taking these exceptions into account, the provision in question does not differ greatly in its practical operation, or in the policy which it reflects, from the understanding embodied in the gentlemen's agreement under which the Japanese Government has cooperated with the Government of the United States in preventing the emigration of Japanese laborers to this country. We fully and gratefully appreciate the assistance which has thus been rendered by the Japanese Government in the carrying out of this long-established policy, and it is not deemed to be necessary to refer to the economic considerations which have inspired it. Indeed, the appropriateness of that policy which has not evidenced any lack of esteem for the Japanese people, their character and achievements, has been confirmed rather than questioned by the voluntary action of your Government in aiding its execution.

The point of substantial difference between the existing arrangement and the provision of the immigration act is that the latter has expressed, as the President has stated, "the determination of the Congress to exercise its prerogative in defining by legislation the control of immigration instead of leaving it to international arrangements." It is not understood that this prerogative is called in question, but, rather, your Government expressly recognizes that "it lies within the inherent sovereign power of each State to limit and to control immigration in its own domains," an authority which it is believed the Japanese Government has not failed to exercise in its own discretion with respect to the admission of aliens and the conditions and location of their settlement within its borders. While the President would have preferred to continue the existing arrangement with the Japanese Government, and to have entered into negotiations for such modifications as might seem to be desirable, this Government does not feel that it is limited to such an international arrangement or that by virtue of the existing understanding or of the negotiations which it has conducted in the past with the Japanese Government, it has in any sense lost or impaired the full liberty of action which it would otherwise have in this matter. On the contrary, that freedom with respect to the control of immigration, which is an essential element of sovereignty and entirely compatible with the friendly sentiments which animate our international relations, this Government in the course of these negotiations always fully reserved.

Thus in the treaty of commerce and navigation concluded with Japan in 1894 it was expressly stipulated in Article II:

"It is, however, understood that the stipulations contained in this and the preceding article do not in any way affect the laws, ordinances or regulations with regard to trade, the immigration of laborers, police and public security which are in force or which may hereafter be enacted in either of the two countries."

It is true that at the time of the negotiation of the treaty of 1911 the Japanese Government desired that the provision above quoted should be eliminated and that this Government acquiesced in that proposal in view of the fact that the Japanese Government had, in 1907–8, by means of the gentlemen's agreement, undertaken such measures of restriction as it was anticipated would prove adequate to prevent any substantial increase in the number of Japanese laborers in the United States. In connection with the treaty revision of 1911 the Japanese Government renewed this undertaking in the form of a declaration attached to the treaty. In acquiescing in this procedure, however, this Government was careful to negative any intention to derogate from the full right to exercise in its discretion control over immigration. In view of the statements contained in your communication with respect to these negotiations I feel that I should refer to the exchange of views then had. You will recall that, in a memorandum of October 19, 1910, suggesting a basis for the treaty revisions then in contemplation, the Japanese Embassy stated:

"* * * The measures which the Imperial Government have enforced for the past two and a half years in regulation of the question of emigration of laborers to the United States have, it is believed, proved entirely satisfactory and far more effective than any prohibition of immigration would have been. Those measures of restraint were undertaken voluntarily, in order to prevent any dispute or issue between the two countries on the subject of labor immigration, and will be continued, it may be added, so long as the condition of things calls for such continuation.

"Accordingly, having in view the actual situation, the Imperial Government are convinced that the reservation in question is not only not necessary, but that it is an engagement which, if continued, is more liable to give rise to misunderstandings than to remove difficulties. In any case, it is a stipulation which not unnaturally is distasteful to national sensibilities. In these circumstances the Imperial Government desire in the new treaty to suppress entirely the reservation above mentioned, and to leave, in word as well as in fact, the question to which it relates for friendly adjustment between the two Governments independently of any conventional stipulations on the subject. In expressing that desire they are not unmindful of the difficulties under which the United States labor in the matter of immigration, and they will accordingly, if so desired, be willing to make the proposed treaty terminable at any time upon six months' notice.

"The Japanese Embassy is satisfied that in the presence of such a termination clause the contracting States would actually enjoy greater liberty of action, so far as immigration is concerned, than under the existing reservation on the subject, however liberally construed."

Replying to these suggestions, the Department of State declared in its memorandum sent to the Japanese ambassador on January 23, 1911, that it was prepared to enter into negotiations for a new treaty of commerce and navigation on the following bases:

"The Department of State understands, and proceeds upon the understanding, that the proposal of the Japanese Government made in the above-mentioned memorandum is that the clause relating to immigration in the existing treaty be omitted for the reason that the limitation and control which the Imperial Japanese Government has enforced for the past two and half years in regulation of emigration of laborers to the United States, and which the two Governments have recognized as a proper measure of adjustment under all the circumstances, are to be continued with equal effectiveness during the life of the new treaty, the two Governments, when necessary, cooperating to this end; the treaty to be made terminable upon six mothns' notice.

"It is further understood that the Japanese Government will at the time of signature of the treaty make a formal declaration to the above effect, which may, in the discretion of the Government of the United States, be made public.

"In accepting the proposal as a basis for the settlement of the question of immigration between the two countries, the Government of the United States does so with all necessary reserves and without prejudice to the inherent sovereign right of either country to limit and control immigration to its own domains or possessions."

On February 8, 1911, in a memorandum informing the Department of State of the readiness of the Japanese Government to enter upon the negotiations which had been suggested by the embassy and to which the department had assented subject to the reservation above quoted, the Japanese Embassy stated that "the Imperial Government concur in the understanding of the proposal relating to the question of immigration set forth in the above mentioned note of January 23 last."

It was thus with the distinct understanding that it was without prejudice to the inherent sovereign right of either country to limit and control immigration to its own domains or possessions that the treaty of 1911 was concluded. While this Government acceded to the arrangement by which Japan undertook to enforce measures designed to obviate the necessity of a statutory enactment, the advisability of such an enactment necessarily remained within the legislative power of this Government to determine. As this power has now been exercised by the Congress in the enactment of the provision in question this legislative action is mandatory upon the executive branch of the Government and allows no latitude for the exercise of executive discretion as to the carrying out of the legislative will expressed in the statute.

It is provided in the immigration act that the provision of section 13 (c), to which you have referred, shall take effect on July 1, 1924. Inasmuch as

the abstention on the part of the United States from such an exercise of its right of statutory control over immigration was the condition upon which was predicated the undertaking of the Japanese Government contained in the Gentlemen's Agreement of 1907–08 with respect to the regulation of the emigration of laborers to the United States, I feel constrained to advise you that this Government cannot but acquiesce in the view that the Government of Japan is to be considered released, as from the date upon which section 13 (c) of the Immigration Act comes into force, from further obligation by virtue of that understanding.

In saying this, I desire once more to emphasize the appreciation on the part of this Government of the voluntary cooperation of your Government in carrying out the gentlemen's agreement and to express the conviction that the recognition of the right of each Government to legislate in control of immigration should not derogate in any degree from the mutual good-will and cordial friendship which have always characterized the relations of the two countries.

Accept, Excellency, the renewed assurances of my highest consideration.

CHARLES E. HUGHES.

APPENDIX B

ALIEN JAPANESE ADMITTED TO AND DEPARTED FROM THE UNITED STATES BY STATUS AND SEX, 1909–1923 [1]

	Admitted		Departed	
	Male	Female	Male	Female
Immigrant	45,243	64,112	28,117	8,332
Nonimmigrant	52,634	9,595	92,497	26,542
Total	97,877	73,707	120,614	34,874

[1] Table D of New Factors in American Japanese Relations and a Constructive Proposal, by Sidney L. Gulick, published by the National Committee on American Japanese Relations.

Male departed	120,614
Male admitted	97,877
Net male departed	22,737
Female admitted	73,707
Female departed	34,874
Net female admitted	38,833
Male admitted	97,877
Female admitted	73,707
Total admitted	171,584
Female net admitted	38,833
Male net departed	22,737
Total net admitted	16,096
Male departed	120,614
Female departed	34,874
Total departed	155,488
Net total admitted	171,584
Net total departed	155,488
Net admitted	16,096
Summary:	
Net admitted to continental United States	8,681
Net admitted to Hawaii, etc	7,415
Total net admitted to United States	16,096

APPENDIX C[2]

1]

NATIONALITY LAW OF JAPAN

(Promulgated April 1, 1899)

1. A child is a Japanese subject if at the time of his birth his father is such. The same applies if the father, having died before the child's birth, was a Japanese subject at the time of his death.

2. If the father before the birth of the child loses his Japanese nationality by divorce or by a dissolution of adoption, the provisions of the preceding article apply with relation back to the beginning of the pregnancy.

The provisions of the foregoing paragraph do not apply if both parents quit the house, unless the mother returns to the house before the birth of the child.

3. When the father is unknown or has no nationality, the child is a Japanese subject if the mother is such.

4. If both parents of a child born in Japan are unknown or have no nationality, the child is a Japanese subject.

5. An alien acquires Japanese in the following cases:

(1) By becoming the wife of a Japanese; (2) by becoming the husband of a Japanese who is the head of the house, at the same time entering her house; (3) by being acknowledged by his father or mother who is a Japanese subject; (4) by adoption by a Japanese subject; (5) by nationalization.

6. The requisites for an alien acquiring Japanese nationality by acknowledgment are as follows: (1) The child must be a minor according to the law of his nationality; (2) the child must not be the wife of an alien; (3) the parent who first acknowledges the child must be a Japanese subject; (4) if both parents acknowledge the child at the same time, the father must be a Japanese subject.

7. With the permission of the Minister of the Home Department, an alien may be naturalized on the following conditions: (1) He must have had his domicile in Japan for five consecutive years; (2) he must be at least twenty years old and a person of full capacity by the law of his nationality; (3) he must be a person of honest behavior; (4) he must have either property or working ability sufficient for an independent livelihood; (5) he must have no nationality or must lose his nationality on acquiring Japanese nationality.

8. A wife of an alien can be naturalized only together with her husband.

9. An alien who has at the time his domicile in Japan can be naturalized, even though the conditions specified in article 7, No. 1, do not exist, in the following cases: (1) If one of his parents is or has been a Japanese subject; (2) if his wife is or has been a Japanese subject; (3) if he was born in Japan; (4) if he has resided in Japan for ten consecutive years.

The persons mentioned in the preceding paragraph under Nos. 1 to 3 can be naturalized only if they have resided in Japan for three consecutive years; but this does not apply, if a parent of a person mentioned in No. 3 was born in Japan.

10. If a parent of an alien is a Japanese subject and such alien has his domicile at the time in Japan, he may be naturalized even though the conditions specified in article 7, Nos. 1, 2, and 4, do not exist.

11. The Minister of the Home Department may, with the sanction of the Emperor, permit the naturalization of an alien who had done specially meritorious services to Japan, without regard to the provisions of article 7.

12. Public notice of a naturalization must be given. A naturalization can be set up against a third person acting in good faith only after such notice.

13. The wife of a person who acquires Japanese nationality acquires it together with her husband.

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[2] These translations were supplied to the author from an unoffical source.

This provision does not apply if the law of the wife's nationality provides to the contrary.

14. If the wife of a person who has acquired Japanese nationality did not herself acquire it according to the provisions of the preceding article, she may be naturalized even though the conditions specified in article 7 do not exist as to her.

15. A child of a person who acquires Japanese nationality acquires it together with his parent, if the child is a minor according to the law of his nationality.

This provision does not apply if the law of the child's nationality provides to the contrary.

16. A person naturalized, a person who as being the child of a naturalized person has acquired Japanese nationality, or a person who has become the adopted child of a Japanese or the husband of a Japanese women who is the head of the house has not the following rights:

(1) The right to become a minister of state, a minister of the Imperial Household, or keeper of the privy seal; (2) the right to become president, vice-president, or a member of the privy council; (3) the right to hold the position of court councillor; (4) the right to become an envoy extraordinary and a minister plenipotentiary; (5) the right to hold the position of a general or admiral; (6) the right to become president of the supreme court, of the board of accounts, or of the administrative litigation court; (7) the right to be elected as a member of the Imperial Diet.

17. The Minister of the Home Department, with the sanction of the Emperor, may except from the restrictions of the preceding article a person who has been naturalized under the provisions of article 11, after five years from the time when he acquired Japanese nationality, or any other person after ten years.

18. A Japanese woman who marries an alien loses thereby her nationality.

19. A person who by marriage or adoption has acquired Japanese nationality loses it on divorce or the dissolution of the adoption only in case he thereby acquires a foreign nationality.

20. A person who voluntarily acquires a foreign nationality loses thereby his Japanese nationality.

20-2. A Japanese who by reason of birth in a foreign country shall have acquired the nationality of that country and has a domicile therein may renounce his Japanese nationality with the permission of the Minister of the Home Department.

If a person who wishes to renounce his Japanese nationality is under fifteen years of age, the application for the permission as provided for in the preceding paragraph must be made by his legal representative, and if such person is a minor of fifteen years of age or more, or a person adjudged incompetent, the application must be made by him with the approval of his legal representative.

The application or the approval, made or given by a mother or a father-in-law, or a natural mother, or a guardian, as provided for in the preceding paragraph, must be made or given with the approval of the family counsel.

A person who has renounced his nationality losses his Japanese nationality.

21. The wife or child of a person who losses his Japanese nationality loses Japanese nationality on acquiring the nationality of such person.

22. The provisions of the preceding paragraph do not apply to the wife or child of a person who loses his Japanese nationality by divorce or the dissolution of adoption, unless the wife in case of dissolution of adoption of her husband does not procure a divorce or the child quits the house, following his father.

23. If a child who is a Japanese subject acquires by acknowledgment a foreign nationality, he loses his Japanese nationality, but this does not apply to a person who has become the wife of a Japanese subject, the husband of a Japanese woman being the head of the house, or the adopted child of a Japanese subject.

24. Notwithstanding the provisions of the proceeding six articles, a male person of the age of seventeen years or more loses his Japanese nationality only if he has already performed his service in the army or navy or is not bound to perform such service.

A person who hold civil or military position can lose his Japanese nationality only after he ceases to hold his position.

25. A person who has lost Japanese nationality by marriage, but after the dissolution of such marriage has domiciled in Japan, may, by the permission of the Minister of the Home Department, recover Japanese nationality.

26. If a person who has lost Japanese nationality according to the provisions of articles 20, 20–2, or 21 has a domicile in Japan, he may, with the permission of the Minister of the Home Department, recover Japanese nationality, but this does not apply to a person mentioned in article 16 who has lost Japanese nationality.

If the person who has lost his Japanese nationality under the provision of Article 20–2 is a minor under fifteen years of age, the application for the permission in the preceding paragraph must be made by his father who lives in the house to which the child belonged at the time of his renunciation of his Japanese nationality; if the father is unable to do this, the application must be made by his mother; if the mother is unable, by his grandfather, or if the grandfather is unable, by his grandmother.

27. The provisions of articles 13 to 15 apply correspondingly to the cases mentioned in the preceding two articles.

SUPPLEMENTARY PROVISION

28. This Law shall be put into force on and after the first of April, 1899.

2] DRAFT OF LAW AMENDING THE LAW OF NATIONALITY

The Law of Nationality shall be amended as follows:

ARTICLE 20, paragraph 2: A Japanese born in a country, to be specified by Imperial Decree, and acquiring the nationality of that country by reason of birth, who shall not have indicated his desire to preserve his Japanese nationality in conformity with a procedure to be set forth by ordinance, shall have lost his Japanese nationality at the time of his birth.

Those preserving their Japanese nationality in conformity with the procedure referred to in the preceding clause, or those Japanese who have acquired the nationality of any country which may be specified, by reason of birth in that country, prior to the date on which the said procedure is published, and who shall be domiciled in such country, may divest themselves of Japanese nationality at will.

Those who have divested themselves of their Japanese nationality in accordance with the provisions of the preceding clause, shall lose their Japanese nationality.

Paragraph 3. Japanese who have acquired the nationality of any country other than those referred to in the preceding paragraph, by reason of birth in such a country, and who shall be domiciled in such country, may divest themselves of Japanese nationality with the consent of the Minister of the Interior.

The provisions of clause 3 of the preceding paragraph shall be applicable *mutatis mutandis* to those who have divested themselves of Japanese nationality in accordance with the provisions of the preceding clauses.

3] SUBSTANCE OF A LAW AMENDING THE LAW OF NATIONALITY

The Law of Nationality is hereby amended to read as follows:

ARTICLE XX–2. A Japanese who by reason of birth in a foreign country to be designated by Imperial Ordinance shall have acquired the nationality of that foreign country shall lose Japanese nationality from the time of birth, unless he declares intention to retain Japanese nationality in accordance with the provisions of an ordinance to be enacted in relation hereto.

A Japanese who has retained Japanese nationality as provided for in the preceding paragraph, or, who by reason of birth in a foreign country prior to the designation of such country as provided for in the preceding paragraph shall have acquired nationality of that foreign country, may relinquish Japanese nationality at will, provided that he retains the nationality of such foreign country and has a domicile therein.

A person relinquishing Japanese nationality under the preceding paragraph loses Japanese nationality.

ARTICLE XX–3. A Japanese who, by reason of birth in a foreign country other than that to be designated by Imperial Ordinance, shall have acquired the nationality of that foreign country and who has a domicile therein, may relinquish Japanese nationality with the permission of the Minister of Home Affairs.

The provisions of paragraph 3 of the preceding article shall be applied to a person who has relinquished nationality under the preceding paragraph.

NOTE.—Under this Article, it is further provided that the following prohibitive article shall not be applied to a person who relinquishes Japanese nationality under Article XX–2 and XX–3:

ARTICLE XXXIV. Notwithstanding the provisions of the preceding six Articles, no male person of 17 years or more may relinquish Japanese nationality unless he has already performed his service in the Army or Navy or is not required to perform such service.

Supplementary Rule. This Law shall take effect at a time to be provided for by Imperial Ordinance.

APPENDIX D

LEADING CASES DECIDED BY THE COURTS IN RELATION TO PERSONS INELIGIBLE TO CITIZENSHIP

1. TAKAO OZAWA *v.* UNITED STATES

Certificate from the Circuit Court of Appeals for the Ninth Circuit. Argued October 3 and 4, 1922. Decided November 13, 1922.

Mr. Justice Sutherland delivered the opinion of the Court.

The appellant is a person of the Japanese race born in Japan. He applied, on October 16, 1914, to the United States district court for the territory of Hawaii to be admitted as a citizen of the United States. His petition was opposed by the United States District Attorney for the District of Hawaii. Including the period of his residence in Hawaii, appellant had continuously resided in the United States for twenty years. He was a graduate of the Berkeley, California, High School, had been nearly three years a student in the University of California, had educated his children in American schools, his family had attended American churches, and he had maintained the use of the English language in his home. That he was well qualified by character and education for citizenship is conceded.

The District Court of Hawaii, however, held that, having been born in Japan, and being of the Japanese race, he was not eligible to naturalization under Section 2169 of the Revised Statutes, and denied the petition. Thereupon the appellant brought the cause to the Circuit Court of Appeals for the Ninth Circuit and that court has certified the following questions, upon which it desires to be instructed:

1. Is the Act of June 29, 1906 (34 Stat. at Large, Part I, Page 596) providing "for a uniform rule for the naturalization of aliens" complete in itself, or is it limited by Section 2169 of the Revised Statutes of the United States?

2. Is one who is of the Japanese race and born in Japan eligible to citizenship under the naturalization laws?

3. If said Act of June 29, 1906, is limited by said Section 2169 and naturalization is limited to aliens being free white persons and to aliens of African nativity and to persons of African descent is one of the Japanese race, born in Japan, under any circumstances eligible to naturalization?

These questions for the purposes of discussion may be briefly restated:

1. Is the Naturalization Act of June 29, 1906, limited by the provisions of Section 2169 of the Revised Statutes of the United States?

2. If so limited, is the appellant eligible to naturalize under that section?

First. Section 2169 is found in Title XXX of the Revised Statutes under the heading "Naturalization," and reads as follows:

> The provisions of this title shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent.

The Act of June 29, 1906, entitled "An Act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform

rule for the naturalization of aliens throughout the United States," consists of 31 sections, and deals primarily with the subject of procedure. There is nothing in the circumstances leading up to or accompanying the passage of the act which suggests that any modification of Section 2169, or of its application, was contemplated.

The report of the House Committee on Immigration and Naturalization, recommending its passage, contains this statement:

> It is of the opinion of your committee that the frauds and crimes which have been committed in regard to naturalization have resulted more from the lack of any uniform system of procedure in such matters than from any radical defeat in the fundamental principles of existing law governing in such cases. The two changes which the committee has recommended in the principal controlling in naturalization matters, and which are embodied in the bill submitted herewith are as follows: First. The requirement that before an alien can be naturalized, he must be able to write either in his own language or in the English language and read, speak and understand the English language: and, Second, That the alien must intend to reside permanently in the United States before he shall be entitled to naturalize. House Report No. 1789, 59th Congress, 1st Sess., p. 3.

This seems to make it quite clear that no change of the fundamental character here involved was in mind.

Section 26 of the Act expressly repeals Sections 2165, 2167, 2168, and 2173 of Title XXX, the subject matter thereof being covered by new provisions. The sections of Title XXX remaining without repeal are Sections 2166, relating to honorably discharged soldiers; Section 2169 now under consideration; Section 2170 requiring five years residence prior to admission; Section 2171, forbidding the admission of alien enemies; Section 2172, relating to the status of children of naturalized persons, and Section 2174, making special provision in respect of the naturalization of seamen.

There is nothing in Section 2169 which is repugnant to anything in the Act of 1906. Both may stand and be given effect. It is clear, therefore, that there is no repeal by implication.

But it is insisted by appellant that Section 2169 by its terms is made applicable only to the provisions of Title XXX, and that it will not admit of being construed as a restriction upon the Act of 1906. Since Section 2169, it is in effect argued, declares that "the provisions of this title shall apply to aliens, being free white persons * * *" it should be confined to the classes provided for in the unrepealed sections of that title, leaving the Act of 1906 to govern in respect of all other aliens, without any restriction except such as may be imposed by that act itself.

It is contended that thus construed the Act of 1906 confers the privilege of naturalization without limitation as to race, since the general introductory words of Section 4 are: "That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise." But, obviously, this clause does not relate to the subject of eligibility, but to the "manner" that is the procedure, to be followed. Exactly the same words are used to introduce the similar provisions contained in Section 2165 of the Revised Statutes. In 1790 the first Naturalization Act provides that "Any alien, being a free white person, * * * may be admitted to become a citizen, * * *." C. 3, I. Stat. 103. This was subsequently enlarged to include aliens of African nativity and persons of African descent. These provisions were restated in the Revised Statutes, so that Section 2165 included only the procedural portion, while the substantive parts were carried into a separate section (2169) and the words "An alien" substituted for the words "Any alien."

In all of the Naturalization Act from 1790 to 1906, the privilege of naturalization was confined to white persons (with the addition in 1870 of those of African nativity and descent) although the exact wording of the various statutes was not always the same. If Congress in 1906 desired to alter a rule so well and so long established, it may be assumed that its purpose would have been definitely disclosed and its legislation to that end put in unmistakable terms.

The argument that because Section 2169 is in terms made applicable only to the title in which it is found, it should now be confined, to the unrepealed sections of that title is not convincing. The persons entitled to naturalization under these unrepealed sections include only honorably discharged soldiers and seamen who have served three years on board an American vessel both of whom were entitled from the beginning to admission on more generous terms than were accorded to other aliens. It is not conceivable that Congress would deliberately have allowed the racial limitation to continue as to soldiers and seamen to whom the statute had accorded an especially favored status, and have removed it as to all other aliens. Such a construction can not be adopted unless it be unavoidable.

The division of the Revised Statutes into titles and chapters is chiefly a matter of convenience, and reference to a given title or chapter is simply a ready method of identifying the particular provisions which are meant. The provisions of Title XXX affected by the limitation of Section 2169 originally embraced the whole subject of naturalization of aliens. The generality of the words in Section 2165 "An alien may be admitted_____" was restricted by Section 2169 in common with the other provisions of the title. The words "this Title" were used for the purpose of identifying that provisions (and others) but it was the provision which was restricted. That provisions having been amended and carried into the Act of 1906, Section 2169 being left intact and unrepealed, it will require something more persuasive than a narrowly literal reading of the identifying words "this Title" to justify the conclusion that Congress intended the restriction to be no longer applicable to the provision.

It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine that matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. See Holy Trinity Church *v.* United States 143 U. S. 457; Heydenfeldt *v.* Davey Gold Mining Co. 93 U. S. 634, 638. We are asked to conclude that Congress without the consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words of Section 2169, which section we may assume was continued for some serious purpose, has radically modified a statute always theretofore maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the Government, a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions, would have been deprived of its force in such dubious and casual fashion. We are therefore constrained to hold that the act of 1906 is limited by the provisions of Section 2169 of the Revised Statutes.

Second. This brings us to inquire whether under Section 2169, the appellant is eligible to naturalization. The language of the Naturalization Laws from 1790 to 1870 had been uniformly such as to deny the privilege of naturalization to an alien unless he came within the description "free white person." By Section 7 of the Act of July 14, 1870, c. 254, 16 Stat. 254, 256, the naturalization laws were "extended to aliens of African nativity and to persons of African descent." Section 2169 of the Revised Statutes, as already pointed out, restricts the privilege to the same classes of persons; viz.: "To aliens (being free white persons and to aliens) of African nativity and persons of African descent." It is true that, in the first edition of the Revised Statutes of 1873, the words in brackets, "being free white persons and to aliens," were omitted, but this was clearly an error of the compilers, and was corrected by the subsequent legislation of 1875 (c. 80, 18 Stat. 316, 318). Is appellant, therefore, a "free white person," within the meaning of that phrase as found in the statute?

On behalf of the appellant it is urged that we should give to this phrase the meaning which it had in the minds of its original framers in 1790 and that it was employed by them for the sole purpose of excluding the black or African race and the Indians then inhabiting this country. It may be true that these races were alone thought of as being excluded, but to say that they were the

only ones within the intent of the statute would be to ignore the affirmative form of the legislation. The provision is not that Negroes and Indians shall be excluded, but it is, in effect, that only free white persons shall be included. The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges. As said by Chief Justice Marshall in Dartmouth College *v.* Woodward, 4 Wheat, 518, 644, in deciding a question of constitutional construction:

It is not enough to say that this particular case was not in the mind of the convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go further and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction, so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception.

If it be assumed that the opinion of the framers was that the only persons who would fall outside the designation "white" were Negroes and Indians, this would go no farther than to demonstrate their lack of sufficient information to enable them to foresee precisely who would be excluded by that term in the subsequent administration of the statute. It is not important in construing their words to consider the extent of their ethnological knowledge or whether they thought that under the statute the only persons who would be denied naturalization would be Negroes and Indians. It is sufficient to ascertain whom they intended to include and having ascertained that it follows, as a necessary corollary, that all others are to be excluded.

The question then is, who are comprehended within the phrase "free white persons"? Undoubtedly the word "free" was originally used in recognition of the fact that slavery then existed and that some white persons occupied that status. The word, however, has long since ceased to have any practical significance and may now be disregarded.

We have been furnished with elaborate briefs in which the meaning of the words "white person" is discussed with ability and at length, both from the standpoint of judicial decision and from that of the science of ethnology. It does not seem to us necessary, however, to follow counsel in their extensive researches in these fields. It is sufficient to note the fact that these decisions are, in substance, to the effect that the words import a racial, and not an individual test, and with this conclusion, fortified as it is by reason and authority, we entirely agree. Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation. Beginning with the decision of Circuit Judge Sawyer in In re Ah Yup 5 Sawy. 155 (1878), the federal and state courts, in an almost unbroken line, have held that the words "white person" were meant to indicate only a person of what is popularly known as the Caucasian race. Among these decisions see for example: In re Camille, 6 Fed. 256; in re Saito 62 Fed. 126; in re Nian, 6 Utah 259; in re Kumagai, 163, Fed. 922; in re Yamashita, 30 Wash. 234, 237; in re Ellis, 179 Fed. 1002; in re Mozumdar, 207 Fed. 115, 117; in re Singh 257, Fed. 209, 211–212; and Petition of Charr, 273, Fed. 207. With the conclusion reached in the several decisions we see no reason to differ. Moreover, that conclusion has been so well established by judicial and executive concurrence and legislative acquiescence that we should not at this late day feel at liberty to disturb it, in the absence of reasons far more cogent than any that have been suggested. United States *v.* Midwest Oil Co. 236 U. S. 459, 472.

The determination that the words "white person" are synonymous with the words "a person of the Caucasian race" simplifies the problem, although

it does not entirely dispose of it. Controversies have arisen and will no doubt arise again in respect of the proper classification of individuals in border line cases. The effect of the conclusion that the words "white person" mean a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, and those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship. Individual cases falling within this zone must be determined as they arise from time to time by what this court has called, in another connection (Davidson *v.* New Orleans, 96 U. S. 97, 104) "the gradual process of judicial inclusion and exclusion."

The appellant in the case now under consideration, however, is clearly of a race which is not Caucasian, and therefore belongs entirely outside the zone on the negative side. A large number of the Federal and state courts have so decided, and we find no reported case definitely to the contrary. These decisions are sustained by numerous scientific authorities, which we do not deem it necessary to review. We think these decisions are right, and so hold.

The briefs filed on behalf of appellant refer in complimentary terms to the culture and enlightenment of the Japanese people, and with this estimate we have no reason to disagree; but these are matters which cannot enter into our consideration of the questions here at issue. We have no function in the matter other than to ascertain the will of Congress and declare it. Of course, there is not implied—either in the legislation or in our interpretation of it—any suggestion of individual unworthiness or racial inferiority. These considerations are in no manner involved.

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2. TERRACE ET AL v. THOMPSON, ATTORNEY GENERAL OF THE STATE OF WASHINGTON

Appeal from the District Court of the United States for the Western District of Washington

Argued April 23 and 24, 1923. Decided November 12, 1923.

Mr. Justice Butler delivered the opinion of the Court.

Appellants brought this suit to enjoin the attorney general of Washington from enforcing the Antialien Land Law of that state, chapter 50, Laws 1921, on the grounds that it is in conflict with the due process and equal protection clauses of the 14th Amendment, with the treaty between the United States and Japan, and with certain provisions of the Constitution of the state.

The appellants are residents of Washington. The Terraces are citizens of the United States and of Washington. Nakatsuka was born in Japan, of Japanese parents, and is a subject of the Emperor of Japan. The Terraces are the owners of a tract of land in King county which is particularly adapted to raising vegetables, and which, for a number of years, had been devoted to that and other agricultural purposes. The complaint alleges that Nakatsuka is a capable farmer and will be a desirable tenant of the land; that the Terraces desire to lease their land to him for the period of five years; that he desires to accept such lease, and that the lease would be made but for the act complained of. And it is alleged that the defendant, as Attorney General, has threatened to and will take steps to enforce the act against the appellants if they enter into such lease, and will treat the leasehold interest as forfeited to the State, and will prosecute the appellants criminally for violation of the act; that the act is so drastic and the penalties attached to its violation are so great that neither of the appellants may make the lease even to test the constitutionality of the act, and that, unless the court shall determine its validity in this suit, the appellants will be compelled to submit to it, whether valid or invalid, and thereby will be deprived of their property without due process of law and denied the equal protection of the laws.

The Attorney General made a motion to dismiss the amended complaint upon the ground that it did not state any matters of equity or facts sufficient to entitle the appellants to relief. The District Court granted the motion and entered a decree of dismissal on the merits. The case is here on appeal from that decree.

Section 33 of Article II of the Constitution of Washington prohibits the ownership of land by aliens other than those who, in good faith, have declared intention to become citizens of the United States, except in certain instances not here involved. The act provides in substance that any such alien shall not own, take, have, or hold the legal or equitable title, or right to any benefit of any land as defined in the act, and that land conveyed to or for the use of aliens in violation of the state Constitution or of the act shall thereby be forfeited to the state. And it is made a gross misdemeanor, punishable by fine or imprisonment, or both, knowingly to transfer land or the right to the control, possession, or use of land to such an alien. It is also made a gross misdemeanor for any such alien having title to such land or the control, possession or use thereof, to refuse to disclose to the Attorney General or the prosecuting attorney the nature and extent of his interest in the land. The Attorney General and the prosecuting attorneys of the several counties are charged with the enforcement of the act.

1. The Attorney General questions the jurisdiction of the court to grant equitable relief even if the statute be unconstitutional. He contends that the appellants have a plain, adequate and speedy remedy at law; that the case involves but a single transaction, and that, if the proposed lease is made, the only remedy which the state has, so far as civil proceedings are concerned, is an escheat proceeding in which the validity of the law complained of may be finally determined; that an acquittal of the Terraces of the criminal offense created by the statute would protect them from further prosecution, and that Nekatsuka is liable criminally only upon his failure to disclose that fact that he holds an interest in the land.

The unconstitutionality of a state law is not of itself ground for equitable relief in the courts of the United States. That a suit in equity does not lie where there is a plain, adequate and complete remedy at law is so well understood as not to require the citation of authorities. But the legal remedy must be as complete, practical and efficient as that with which equity could afford. Boise Artesian Water Co. *v.* Boise City, 213 U. S. 276, 281; Walla Walla City *v.* Walla Walla Water Co., 172 U. S. 1, 11, 12. Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity. Cavanaugh *v.* Looney, 248 U. S. 453, 456; Truax *v.* Raich, 239 U. S. 33, 37, 38. See also Ex parte Young, 209 U. S. 123, 155, 162; Adams *v.* Tanner, 244 U. S. 590, 592; Greene *v.* Louisville & Interurban R. R. Co., id. 499, 506; Home Telephone & Telegraph Co. *v.* Los Angeles, 227 U. S. 278, 293; Philadelphia Co. *v.* Stimson, 223 U. S. 605, 621; Western Union Telegraph Co. *v.* Andrews, 216 U. S. 165; Dobbins *v.* Los Angeles, 195 U. S. 223, 241; Davis *v.* Farnum Manufacturing Co. *v.* Los Angeles, 189 U. S. 207, 217.

The Terraces' property in the land include the right to use, lease and dispose of it for lawful purposes (Buchanan *v.* Warley, 245 U. S. 60, 74) and the Constitution protects these essential attributes of property (Holden *v.* Hardy, 169 U. S. 366, 391) and also protects Nakatsuka in his right to earn a livelihood by following the ordinary occupations of life. Truax *v.* Raich, Supra; Meyer *v.* Nebraska, 262 U. S. 390. If, as claimed, the state act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then its enforcement will deprive the owners of their right to lease their land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer, and the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants, as to which they have no remedy at law which is as practical, efficient or adequate as the remedy in equity. And assuming, as suggested by the Attorney General, that after the making of the lease the validity of the law might be determined in proceedings to declare a forfeiture of the property to the State or in criminal proceedings to punish the owners, it does not follow that they may not appeal to equity for relief. No action at law can be initiated against them until after the consummation of the proposed lease. The threatened enforcement of the law deters them. In order to obtain a remedy at law, the owners, even if they would take the risk of fine imprisonment, and loss of property, must continue to suffer deprivation of their right to dispose of or lease their land to any such alien until one is found who

will join them in violating the terms of the enactment and take the risk of forfeiture. Similarly Nakatsuka must continue to be deprived of his right to follow his occupation as farmer until a land owner is found who is willing to make a forbidden transfer of land and take the risk of imprisonment. The owners have an interest in the freedom of the alien, and he has an interest in their freedom, to make a lease. The state act purports to operate directly upon the consummation of the proposed transaction between them, and the threat and purpose of the Attorney General to enforce the punishments and forfeiture prescribed prevent each from dealing with the other. Truax *v.* Raich, Supra. They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had, if the law complained of is shown to be in contravention of the Federal Constitution.

2. Is the act repugnant to the due process clause or the equal protection clause of the 14th Amendment?

Appellants contend that the act contravenes the due process clause in that it prohibits the owners from making lawful disposition or use of their land, and makes it a criminal offense for them to lease it to the alien, and prohibits him from following the occupation of farmer; and they contend that it is repugnant to the equal protection clause in that aliens are divided into two classes—those who may be and those who may not become citizens—one class being permitted, while the other is forbidden, to own land as defined.

Alien inhabitants of a state, as well as all other persons within its jurisdiction, may invoke the protection of these clauses. Yick Wo *v.* Hopkins, 118 U. S. 336, 369; Truax *v.* Raich, Supra, 39. The 14th amendment, as against the arbitrary and capricious or unjustly discriminatory action of the state, protects the owners in their right to lease and dispose of their land for lawful purposes, and the alien resident in his right to earn a living by following ordinary occupations of the community, but it does not take away from the state those powers of police that were reserved at the time of the adoption of the Constitution. Barbier *v.* Connolly, 113 U. S. 27, 31; Mugler *v.* Kansas, 123 U. S. 623, 663; Powell *v.* Pennsylvania, 127 U. S. 678, 683; In re. Kemmler, 136 U. S. 436, 449; Lawton *v.* Steel, 152 U. S. 133, 136; Phillips *v.* Mobile, 208 U. S. 472, 479; Hendrick *v.* Maryland, 235 U. S. 610, 622, 623. And in the exercise of such powers the state has wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace, and good order of its people.

And, while Congress has exclusive jurisdiction over immigration, naturalization, and the disposal of the public domain, each state, in the absence of any treaty provision to the contrary, has power to deny to aliens the right to own land within its borders. Hauenstein *v.* Lynham, 100 U. S. 483, 484, 488; Blythe *v.* Hinckley, 180 U. S. 333, 340; Mr. Justice Field speaking for this Court (Phillips *v.* Moore, 100 U. S. 208) said (p. 212):

"By the common law, an alien cannot acquire real property by operation of law, but may take it by act of the grantor, and hold it until office found; that is until the fact of alienage is authoritatively established by a public officer, upon an inquest held at the instance of the government."

State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious, or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause.

This brings us to a consideration of appellants' contention that the act contravenes the equal protection clause. That clause secures equal protection to all in the enjoyment of their rights under like circumstances. In re. Kemmler, Supra; Giozza *v.* Tiernan, 148 U. S. 657, 662. But this does not forbid every distinction in the law of a State between citizens and aliens resident therein. In Traux *v.* Corrigan, 257 U. S. 312, this Court said (p. 337):

"In adjusting legislation to the need of the people of a state, the legislature has a wide discretion and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable, that classification of persons is constantly necessary. * * * Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things, and persons, and class them in accordance with their pertinence to the purpose in hand."

The rights, privileges and duties of aliens differ widely from those of citizens; and those of alien declarants differ substantially from those of nondeclarants.

Formerly in many of the states the right to vote and hold office was extended to declarants, and many important offices have been held by them. But these rights have not been granted to nondeclarants. By various acts of Congress, declarants have been made liable to military duty, but no act has imposed that duty on nondeclarants. The fourth paragraph of Article I of the treaty invoked by the appellants, provides that the citizens or subjects of each shall be exempt in the territories of the other from compulsory military service either on land or sea, in the regular forces, or in the national guard, or in the militia; also from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions. The alien's formerly declared bona fide intention to renounce forever all allegiance and fidelity to the sovereignity to which he lately has been a subject, and to become a citizen of the United States and permanently to reside therein markedly distinguishes him from an ineligible alien or an eligible alien who has not so declared.

By the statute in question all liens who have not in good faith declared intention to become citizens of the United States, as specified in Section I (a) are called "aliens" and it is provided that they shall not "own" "land," as defined in clauses (d) and (b) of Section I, respectively. The class so created includes all, but is not limited to aliens not eligible to become citizens. Eligible aliens who have not declared their intention to become citizens are included, and the act provides that unless declarants be admitted to citizenship within seven years after the declaration is made, bad faith will be presumed. This leaves the class permitted so to own land made up of citizens and aliens who may, and who intend to, become citizens, and who in good faith have made the declaration required by the immigration laws. The inclusion of good faith declarants in the same class with citizens does not unjustly disciminate against aliens who are ineligible, or against eligible aliens who have failed to declare their intention. The classification is based on eligibility and purpose to naturalize. Eligible aliens are free white persons and persons of African nativity or descent. Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit. But it is not to be supposed that its acts defining eligibility are arbitrary or unsupported by reasonable considerations of public policy. The state property may assume that the considerations upon which Congress made such classification are substantial and reasonable. Generally speaking, the natives of European countries are eligible. Japanese, Chinese, and Malays are not. Appellant's contention that the state act discriminates arbitrarily against Nakatsuka and other ineligible aliens because of their race and color is without foundation. All persons of whatever color or race who have not declared their intention in good faith to become citizens are prohibited from so owning agricultural lands. Two classes of aliens inevitably result from the Naturalization Laws—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from alien the privilege of land ownership as defined in the act. We agree with the Court below (274 Fed. 841, 849) that—

"It is obvious that one who is not a citizen and can not become one lacks an interest in, and the power to effectually work for the welfare of, the State, and, so lacking, the State may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens."

And we think it is clearly within the power of the State to include nondeclarants eligible aliens and ineligible aliens in the same prohibited class. Reasons supporting discrimination against aliens who may, but who will not, naturalize are obvious.

Traux *v.* Raich, Supra, does not support the appellants' contention. In that case, the court held to be repugnant to the 14th Amendment an act of the legislature of Arizona making it a criminal offense for an employer of more than five workers at any one time, regardless of kind or class of work, or sex of workers, to employ less than 80 per cent qualified electors or native-born citizens of the United States. In the opinion it was pointed out that the legislation there in question did not relate to the devolution of real property, but that the discrimination was imposed upon the conduct of ordinary private enterprises that were relatively very small. It was said that the right to work for a living in the common occupations of the community is a part of the freedom which it was the purpose of the 14th Amendment to secure.

In the case before us, the thing forbidden is very different. It is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the state. The quality and allegiance of those who own, occupy, and use the farm lands within its borders are matters of highest importance, and affect the safety and power of the state itself.

The Terraces, who are citizens, have no right safeguarded by the 14th Amendment to lease their land to aliens lawfully forbidden to take or have such lease. The state act is not repugnant to the equal protection clause, and does not contravene the 14th Amendment.

3. The state act, in our opinion, is not in conflict, with the treaty between the United States and Japan. The preamble declares it to be "a treaty of commerce and navigation," and indicates that it was entered into for the purpose of establishing the rules to govern commercial intercourse between the countries.

The only provision that relates to owning or leasing land is in the first paragraph of Article I, which is as follows:

"The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purpose, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established."

For the purpose of bringing Nakatsuka within the protection of the treaty, the amended complaint alleges that, in addition to being a capable farmer, he is engaged in the business of trading, wholesale and retail, in farm products, and shipping the same in intrastate, interstate, and foreign commerce, and, instead of purchasing such farm products, he has produced, and desires to continue to produce, his own farm products, for the purpose of selling them in such wholesale and retail trade; and if he is prevented from leasing land for the purpose of producing farm products for such trade, he will be prevented from engaging in trade and the incidents to trade, as he is authorized to do under the treaty.

To prevail on this point, appellants must show conflict between the state act and the treaty. Each state, in the absence of any treaty provision conferring the right, may enact laws prohibiting aliens from owning land within its borders. Unless the right to own or lease land is given by the treaty, no question of conflict can arise. We think that the treaty not only contains no provision giving Japanese the right to own or lease land for agricultural purposes, but, when viewed in the light of the negotiations leading up to its consummation, the language shows that the high contracting parties respectively intended to withhold a treaty grant of that right to the citizens or subjects of either in the territories of the other. The right to "carry on trade" or "to own or lease and occupy houses, manufactories, warehouses, and shops" or "to lease land for residential and commercial purposes," or "to do anything incident to or necessary for trade," can not be said to include the right to own or lease, or to have any title to or interest in, land for agricultural purposes. The enumeration of rights to own or lease for other specified purposes impliedly negatives the right to own or lease land for these purposes. A careful reading of the treaty sufficies, in our opinion, to negative the claim asserted by appellants that it conflicts with the state act.

But, if the language left the meaning of its provisions doubtful or obscure, the circumstances of the making of the treaty, as set forth in the opinion of the district court (Supra 844, 845), would resolve all doubts against the appellants' contention. The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, in accordance with the desire of Japan, the right to own land was not conferred. And it appears that the right to lease land for other than residential and commercial purposes was deliberately withheld by substituting the words of the treaty, "to lease land for residential and commercial purposes" for a more comprehensive clause contained in an earlier draft of the instrument, namely, "to lease land for residential, commercial, industrial, manufacturing, and other lawful purposes.

4. The act complained of is not repugnant to Section 33 of Article II, of the State Constitution.

That section provides that "the ownership of lands by aliens * * * is prohibited in this State * * *" Appellants assert that the proposed lease of

farm land for five years is not "ownership," and is not prohibited by that clause of the State Constitution and cannot be forbidden by the State Legislature. That position is untenable. In State *v.* O'Connell, 121 Wash. 542, a suit for the purpose of escheating to the State an undivided one-half interest in land, or the proceeds thereof, held in trust for the benefit of an alien, a subject of the British Empire, decided since this appeal was taken, the Supreme Court of Washington held that the statute in question did not contravene this provision of the Constitution of that State. The question whether or not a state statute conflicts with the Constitution of the State is settled by the decision of its highest court. Carstairs *v.* Cochran, 193 U. S. 10, 16. This Court "is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the State." Quong Ham Wah Co. *v.* Indusrial Commission, 255 U. S. 445, 448 and cases cited.

The decree of the District Court is affirmed.

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3. PORTERFIELD ET AL v. WEBB, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, ET AL.

Appeal from the District Court of the United States for the Southern District of California.

Argued April 23 and 24, 1923. Decided November 12, 1923.

Mr. Justice Butler delivered the opinion of the Court.

Appellants brought this suit to enjoin the above-named attorney general and district attorney from enforcing the California Alien Land Law, submitted by the initiative and approved by the electors, November 2, 1920. (Stat. 1921 p. lxxxiii.)

Appellants are residents of California. Porterfield is a citizen of the United States and of California. Mizuno was born in Japan, of Japanese parents, and is a subject of the Emperor of Japan. Porterfield is the owner of a farm in Los Angeles county, containing 80 acres of land, which is particularly adapted to raising vegetables, and which, for some years, has been devoted to that and other agricultural purposes. The complaint alleges that Mizuno is a capable farmer and a desirable person to become a tenant of the land, and that Porterfield desires to lease the land to him for a term of five years, and that he desires to accept the lease, and that the lease would be made but for the act complained of. And it is alleged that the appellees, as Attorney General and District Attorney, have threatened to enforce the act against the appellants if they enter into such lease, and will forfeit, or attempt to forfeit, the leasehold interest to the state and will prosecute the appellants criminally for violation of the act. It is further alleged that the act is so drastic and the penalties attached to a violation of it are so great that neither of the appellants may make the lease even for the purpose of testing the constitutionality of the act, and that, unless the court shall determine its validity in this suit, appellants will be compelled to submit to it, whether valid or invalid, and thereby will be deprived of their property without due process of law and denied equal protection of the laws.

Appellants made a motion for a temporary injunction to restrain appellees, during the pendency of the suit, from bringing or permitting to be brought any proceedings for the purpose of enforcing the act against the appellants. This was heard by three judges as provided in Section 266 of the Judicial Code. The motion was denied.

The act provides in Sections 1 and 2 as follows:

"SECTION 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit, and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

"SEC. 2. All aliens other than those mentioned in section 1 of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise."

Other sections provide penalties by escheat and imprisonment for violation of section 2.

The treaty between the United States and Japan (37 Stat. 1504–1509) does not confer upon Japanese subjects the privilege of acquiring or leasing land for agricultural purposes. Terrace *v.* Thompson, Ante, 197.

Appellants contend that the law denies to ineligible aliens equal protection of the laws secured by the 14th Amendment, because it forbids them to lease land in the state, although the right to do so is conferred upon all other aliens. They also contend that the act is unconstitutional because it deprives Porterfield of the right to enter into contracts for the leasing of his realty and deprives Mizuno of his liberty and property by debarring him from entering into a contract for the purpose of earning a livelihood in a lawful occupation.

This case is similar to Terrace *v.* Thompson, supra. In that case the grounds upon which the Washington Alien Land Law was attacked included those on which the California act is assailed in this case. There the prohibited class was made up of aliens who had not in good faith declared intention to become citizens. The class necessarily includes all ineligible aliens, and, in addition thereto, all eligible aliens who had failed so to declare. In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the states have wide discretion. Each has its own problems, depending on circumstances existing there. It is not always practical or desirable that legislation shall be the same in different states. We can not say that the failure of the California legislature to extend the prohibited class so as to include eligible aliens who have failed to declare their intention to become citizens of the United States was arbitrary or unreasonable. See Miller *v.* Wilson, 236 U. S. 373, 383, 384, and cases cited.

Our decision in Terrace *v.* Thompson, supra, controls the decision of all questions raised here.

The order of the District Court is affirmed.

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4. Decision by Judge Lowell, October 17, 1924

District Court of the United States, District of Massachusetts

Civil No. 2759. In re Chiu Shee

OPINION

(October 17, 1924)

Lowell, J.: Return on a writ of habeas corpus to obtain the release of a person held for deportation by the immigration authorities, who decided that the immigration act of May 26, 1924, prohibited her from landing. The case is properly before the court, as it involves the interpretation of a law on which the decision of the immigration officials is not final. (Gegiow *v.* Uhl, 239 U. S. 3.)

These proceedings raise the question whether a Chinese woman born of foreign parents, who is the wife of an American citizen, is prevented by the recent immigration act from entering this country, thus changing the settled law which allows such persons to join their husbands here (Tsoi Sim *v.* U. S., 116 F. R. 920), though not to be naturalized (Fong Yue Ting *v.* U. S., 149 U. S. 698). A casual reading of the statute would seem to show that it has this result, but if we adopt the attitude toward such legislation of the Supreme Court of the United States in the leading case of Holy Trinity Church *v.* U. S. (143 U. S. 457), and consider the circumstances attending the passage of the act and the evils it was intended to prevent, we shall come to a contrary conclusion.

It is well known that the evil aimed at by this act was the presence in the United States of a large number of aliens who were not desirous of adopting our customs, but preferred to follow their old ways and were thus not likely to be assimilated with the rest of the population and become desirable citizens. The periodicals and newspapers have pointed out the dangers of such a situation, and have often figuratively expressed their fears by the prophecy that an ignorant mass of foreigners could not be refined into good material in the "melting pot" of American civilization. We have also been treated to learned

dissertations on the impossibility of combining brachycephalic and dolichocephalic races. This subject is interesting to those who understand it, if such there be, but not relevant to the present discussion except as showing how deeply the danger of unlimited immigration had impressed the public mind.

The result desired by the passage of the act would not be furthered by prohibiting a wife from joining her husband who is a citizen of the United States by virtue of his birth. (U. S. *v.* Wong Kim Ark, 169 U. S. 649.) It would make him discontented with his American citizenship, as it would deprive him of the society of his wife, to which he is entitled by law. (Tsoi Sim *v.* U. S., 116 F. R. 920 and cases cited.)

A careful scrutiny of the provisions of the act will show that they are inconsistent with one another. Section 4, relating to nonquota immigrants, provides:

"When used in this act the term "nonquota immigrant" means (a) an immigrant who is the unmarried child under eighteen years of age, or the wife of a citizen of the United States who resides therein at the time of the filing of a petition under section 9 '(which provides for the admission of such persons, who are not reckoned in the quota)'; (b) an immigrant returning from a temporary visit abroad; (c) an immigrant with his wife and children if he were born in Central or South America or certain of the West Indies; (d) an immigrant, with his wife and children, who is a minister or a professor; or (e) a student."

Section 13, on which the immigration officials base their decision, provides:

"(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a nonquota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under eighteen years of age of an immigrant admissible under such subdivision (d) and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."

It will be noticed that subdivision (a) of section 4, which relates to the wives of American citizens, was not included among the exemptions. On this omission the assumption is based that Congress expressly forbade the entry of the wife of an American citizen if she could not be naturalized. The assumption rests on an insecure foundation and arises from a literal construction of the act without seeking to ascertain its intention. The result of such a construction would be that Congress showed itself more solicitous for the welfare of an alien minister or professor (whose wife is allowed to enter, sec. 13(c)) than for that of American citizens. Such a result would be absurd, and we are told by the highest authorities that an act of Congress should not be so construed as to lead to absurdities. (Lau Ow Bew *v.* U. S., 144 U. S. 47; Holy Trinity Church *v.* U. S., 143 U. S. 457, and cases cited.)

Nor is such a construction necessary. Section 4 (a) standing alone would allow a Chinese wife of an American citizen not only to be admitted, but to be admitted in excess of the quota. The omission of subdivision (a) of section 4 from the provisions of section 13 arose not from a settled purpose of Congress to exclude such a wife, but from the fact that in considering section 13 Congress had only aliens in mind and did not realize that the section as passed diminished the rights of American citizens, already carefully safeguarded by section 4 (a). The reason why this inconsistency was overlooked was that the report of the House committee stated specifically that wives of American citizens were exempted, and the chairman of that committee (Mr. Johnson) in the debate in the House emphasized this feature of the bill. (Congressional Record, vol. 65, No. 93, p. 5851.) The discrepancy between section 4 (a) and section 13 (c) is thus reconciled by construing the latter provision as applying only to aliens who are not related to American citizens.

We have seen by a careful study of the statute in the light of its attending circumstances that it allows Chinese wives to enter this country. As was pointed out in the Holy Trinity Church case, this construction of the act is not statute making by the court, but is the result of a critical analysis of its provisions in order to arrive at the legislative intent. Judge Neterer, in an opinion filed September 23, 1924, of which I have been given a copy, has held that the wives of Chinese merchants and the Chinese wives of American citizens were not excluded by the immigration act of 1924. I follow this decision in so far as it relates to the case at bar.

The conclusion arrived at is supported by the decisions allowing the wives of Chinese merchants to accompany their husbands, though they were not expressly allowed to do so by the terms of the statutes. (Re Chung Toy Ho., 42, F. R. 398; U. S. *v.* Mr. Gue Lim, 176 U. S. 459.)

Compare also the cases relating to the contract labor clause of immigration laws, where the courts have interpreted the statutes very liberally in favor of immigrants: Holy Trinity Church *v.* U. S., 143 U. S. 457; U. S. *v.* Laws, 163 U. S. 258; U. S. *v.* Gay, 95 F. R. 226; Kuwabara *v.* U. S., 260 F. R. 104; U. S. *v.* Union Bank of Canada, 262 F. R. 91; Ex parte Aird, 276 F. R. 954; Ex parte Gouthro, 296 F. R. 506; and the cases holding that Chinese merchants need not register nor procure certificates: Lau Ow Bew *v.* U. S., 144 U. S. 47; Tom Hong *v.* U. S., 193 U. S. 517; and see Lee Kan *v.* U. S., 62 F. R. 914.

The very recent case of Chung Fock *v.* White, 264 U. S. 443, is not inconsistent with the result above reached. It related to a minor detail of an immigration act, and while it may seem somewhat inconsistent with the cases relating to Chinese merchants, to which we have above referred, it was not intended to affect those decisions, nor does it throw any doubt on the validity of the reasoning in the Holy Trinity Church case, which was not mentioned in the opinion. Chiu Shee may be discharged.

APPENDIX E

AREA AND DENSITY OF POPULATION OF NATIONS POSSESSING TERRITORY SUSCEPTIBLE TO INCREASE IN POPULATION THROUGH IMMIGRATION

[Compiled from Table No. 460, Statistical Abstract of the United States, 1922, page 727]

Country	Area, square miles	Population per square mile
Argentina	1,136,137	7.66
Australasia:		
Commonwealth of Australia	2,974,581	1.89
New Zealand	103,581	12.22
Bolivia	613,900	4.71
Brazil	3,145,550	9.74
Canada	3,729,665	2.40
Central American States:		
Costa Rica	18,691	25.95
Guatemala	43,641	45.94
Honduras	46,250	14.31
Nicaragua	49,552	12.88
Panama	32,380	13.40
Chile	289,796	13.18
China (all Provinces not densely settled)	4,278,352	100.85
Colombia	435,278	14.47
Ecuador	118,627	16.86
Paraguay	97,722	10.23
Peru	533,912	13.67
Russia	8,067,766	16.27
United States (including Alaska, Hawaii, and Porto Rico)	3,627,557	30.58
Uruguay	72,172	21.19
Venezuela	393,977	6.12

APPENDIX F

TEXT OF THE IMMIGRATION ACT OF 1924

[PUBLIC—No. 139—68TH CONGRESS]

[H. R. 7995]

AN ACT To limit the immigration of aliens into the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration act of 1924."

IMMIGRATION VISAS

SEC. 2. (a) A consular officer upon the application of any immigrant (as defined in section 3) may (under the conditions hereinafter prescribed and subject to the limitation prescribed in this Act or regulations made thereunder as to the number of immigration visas which may be issued by such officer) issue to such immigrant an immigration visa which shall consist of one copy of the application provided for in section 7, visaed by such consular officer. Such visa shall specify (1) the nationality of the immigrant; (2) whether he is a quota immigrant (as defined in section 5) or a non-quota immigrant (as defined in section 4); (3) the date on which the validity of the immigration visa shall expire; and (4) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

(b) The immigrant shall furnish two copies of his photograph to the consular officer. One copy shall be permanently attached by the consular officer to the immigration visa and the other copy shall be disposed of as may be by regulations prescribed.

(c) The validity of an immigration visa shall expire at the end of such period, specified in the immigration visa, not exceeding four months, as shall be by regulations prescribed. In the case of an immigrant arriving in the United States by water, or arriving by water in foreign contiguous territory on a continuous voyage to the United States, if the vessel, before the expiration of the validity of his immigration visa, departed from the last port outside the United States and outside foreign contiguous territory at which the immigrant embarked, and if the immigrant proceeds on a continuous voyage to the United States, then, regardless of the time of his arrival in the United States, the validity of his immigration visa shall not be considered to have expired.

(d) If an immigrant is required by any law, or regulations or orders made pursuant to law, to secure the visa of his passport by a consular officer before being permitted to enter the United States, such immigrant shall not be required to secure any other visa of his passport than the immigration visa issued under this act, but a record of the number and date of his immigration visa shall be noted on his passport without charge therefor. This subdivision shall not apply to an immigrant who is relieved under subdivision (b) of section 13, from obtaining an immigration visa.

(e) The manifest or list of passengers required by the immigration laws shall contain a place for entering thereon the date, place of issuance, and number of the immigration visa of each immigrant. The immigrant shall surrender his immigration visa to the immigration officer at the port of inspection, who shall at the time of inspection indorse on the immigration visa the date, the port of entry, and the name of the vessel, if any, on which the immigrant arrived. The immigration visa shall be transmitted forthwith by the immigration officer in charge at the port of inspection to the Department of Labor under regulations prescribed by the Secretary of Labor.

(f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the application fails to comply with the provisions of this act, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws.

(g) Nothing in this act shall be construed to entitle an immigrant, to whom an immigration visa has been issued, to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws. The substance of this subdivision shall be printed conspicuously upon every immigration visa.

(h) A fee of $9 shall be charged for the issuance of each immigration visa, which shall be covered into the Treasury as miscellaneous receipts.

DEFINITION OF "IMMIGRANT"

SEC. 3. When used in this act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

NONQUOTA IMMIGRANTS

SEC. 4. When used in this act the term "nonquota immigrant" means—

(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9;

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad;

(c) An immigrant who was born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him;

(d) An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him; or

(e) An immigrant who is a bona fide student at least 15 years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such instiuttion of learning fails to make such reports promptly the approvel shall be withdrawn.

QUOTA IMMIGRANTS

SEC. 5. When used in this Act the term "quota immigrant" means any immigrant who is not a nonquota immigrant. An alien who is not particularly specified in this act as a nonquota immigrant or a nonimmigrant shall not be admitted as a nonquota immigrant or a nonimmigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbiding immigration.

PREFERENCES WITHIN QUOTAS

SEC. 6. (a) In the issuance of immigration visas to quota immigrants preference shall be given—

(1) To a quota immigrant who is the unmarried child under 21 years of age, the father, the mother, the husband, or the wife, of a citizen of the United States who is 21 years of age or over; and

(2) To a quota immigrant who is skilled in agriculture, and his wife, and his dependent children under the age of 16 years, if accompanying or following to join him. The preference provided in this paragraph shall not apply to immigrants of any nationality the annual quota for which is less than 300.

(b) The preference provided in subdivision (a) shall not in the case of quota immigrants of any nationality exceed 50 per centum of the annual quota for such nationality. Nothing in this section shall be construed to grant to the class of immigrants specified in paragraph (1) of subdivision (a) a priority in preference over the class specified in paragraph (2).

(c) The preference provided in this section shall, in the case of quota immigrants of any nationality, be given in the calendar month in which the right to preference is established, if the number of immigration visas which may be issued in such month to quota immigrants of such nationality has not already been issued; otherwise in the next calendar month.

APPLICATION FOR IMMIGRATION VISA

SEC. 7. (a) Every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulation prescribed.

(b) In the application the immigrant shall state (1) the immigrant's full and true name; age, sex, and race; the date and place of birth; places of residence for the five years immediately preceding his application; whether married or single, and the names and places of residence of wife or husband and minor children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); ability to speak, read, and write; names and addresses of parents, and if neither parent living, then the name and address of his nearest relative in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, what relative or friend and his name and complete address; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to abide in the United States permanently; whether ever in prison or almshouse; whether he or either of his parents has ever been in an institution or hospital for the care and treatment of the insane; (2) if he claims to be a nonquota immigrant, the facts on which he bases such claim; and (3) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws, as may be by regulations prescribed.

(c) The immigrant shall furnish, if available, to the consular officer, with his application, two copies of his "dossier" and prison record and military record, two certified copies of his birth certificate, and two copies of all other available public records concerning him kept by the Government to which he owes allegiance. One copy of the documents so furnished shall be permanently attached to each copy of the application and become a part thereof. An immigrant having an unexpired permit issued under the provisions of section 10 shall not be subject to this subdivision. In the case of an application made before September 1, 1924, if it appears to the satisfaction of the consular officer that the immigrant has obtained a visa of his passport before the enactment of this act, and is unable to obtain the documents referred to in this subdivision without undue expense and delay, owing to absence from the country from which such documents should be obtained, the consular officer may relieve such immigrant from the requirements of this subdivision.

(d) In the application the immigrant shall also state (to such extent as shall be by regulations prescribed) whether or not he is a member of each class of individuals excluded from admission to the United States under the immigration laws, and such classes shall be stated on the blank in such form as shall be by regulations prescribed, and the immigrant shall answer separately as to each class.

(e) If the immigrant is unable to state that he does not come within any of the excluded classes, but claims to be for any legal reason exempt from exclusion, he shall state fully in the application the grounds for such alleged exemption.

(f) Each copy of the application shall be signed by the immigrant in the presence of the consular officer and verified by the oath of the immigrant administered by the consular officer. One copy of the application, when visaed by the consular officer, shall become the immigration visa, and the other copy shall be disposed of as may be by regulations prescribed.

(g) In the case of an immigrant under eighteen years of age the application may be made and verified by such individual as shall be by regulations prescribed.

(h) A fee of $1 shall be charged for the furnishing and verification of each application, which shall include the furnishing and verification of the duplicate, and shall be covered into the Treasury as miscellaneous receipts.

NONQUOTA IMMIGRATION VISAS

SEC. 8. A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a nonquota immigrant as such upon satisfactory proof, under regulations prescribed under this act, that the applicant is entitled to be regarded as a nonquota immigrant.

ISSUANCE OF IMMIGRATION VISAS TO RELATIVES

SEC. 9. (a) In case of any immigrant claiming in his application for an immigration visa to be a nonquota immigrant by reason of relationship under the provisions of subdivision (a) of section 4, or to be entitled to preference by reason of relationship to a citizen of the United States under the provisions of section 6, the consular officer shall not issue such immigration visa or grant such preference until he has been authorized to do so as hereinafter in this section provided.

(b) Any citizen of the United States claiming that any immigrant is his relative, and that such immigrant is properly admissible to the United States as a nonquota immigrant under the provisions of subdivision (a) of section 4 or is entitled to preference as a relative under section 6, may file with the Commissioner General a petition in such form as may be by regulations prescribed, stating (1) the petitioner's name and address; (2) if a citizen by birth, the date and place of his birth; (3) if a naturalized citizen, the date and place of his admission to citizenship and the number of his certificate, if any; (4) the name and address of his employer or the address of his place of business or occupation if he is not an employee; (5) the degree of the relationship of the immigrant for whom such petition is made, and the names of all the places where such immigrant has resided prior to and at the time when the petition is filed; (6) that the petitioner is able to and will support the immigrant if necessary to prevent such immigrant from becoming a public charge; and (7) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

(c) The petition shall be made under oath administered by any individual having power to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer. The petition shall be supported by any documentary evidence required by regulations prescribed under this act. Application may be made in the same petition for admission of more than one individual.

(d) The petition shall be accompanied by the statements of two or more responsible citizens of the United States, to whom the petitioner has been personally known for at least one year, that to the best of their knowledge and belief the statements made in the petition are true and that the petitioner is a responsible individual able to support the immigrant or immigrants for whose admission application is made. These statements shall be attested in the same way as the petition.

(e) If the Commissioner General finds the facts stated in the petition to be true, and that the immigrant in respect of whom the petition is made is entitled to be admitted to the United States as a nonquota immigrant under subdivision (a) of section 4 or is entitled to preference as a relative under section 6, he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular offi-

cer with whom the application for the immigration visa has been filed to issue the immigration visa or grant the preference.

(f) Nothing in this section shall be construed to entitle an immigrant, in respect of whom a petition under this section is granted, to enter the United States as a nonquota immigrant, if, upon arrival in the United States, he is found not to be a nonquota immigrant.

PERMIT TO REENTER UNITED STATES AFTER TEMPORARY ABSENCE

SEC. 10. (a) Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph.

(b) If the Commissioner General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

(c) On good cause shown the validity of the permit may be extended for such period or periods, not exceeding six months each, and under such conditions, as shall be by regulations prescribed.

(d) For the issuance of the permit, and for each extension thereof, there shall be paid a fee of $3, which shall be covered into the Treasury as miscellaneous receipts.

(e) Upon the return of the alien to the United States the permit shall be surrendered to the immigration officer at the port of inspection.

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

NUMERICAL LIMITATIONS

SEC. 11. (a) The annual quota of any nationality shall be 2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100.

(b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.

(c) For the purpose of subdivision (b) national origin shall be ascertained by determining as nearly as may be, in respect of each geographical area which under section 12 is to be treated as a separate country (except the geographical areas specified in subdivision (c) of section 4) the number of inhabitants in continental United States in 1920 whose origin by birth or ancestry is attributable to such geographical area. Such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable.

(d) For the purpose of subdivisions (b) and (c) the term "inhabitants in continental United States in 1920" does not include (1) immigrants from the geographical areas specified in subdivision (c) of section 4 or their descendants, (2) aliens ineligible to citizenship or their decendants, (3) the descendants of slave immigrants, or (4) the descendants of American aborigines.

(e) The determination provided for in subdivision (c) of this section shall be made by the Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly. In making such determination such officials may call for information and expert assistance from the Bureau of the Census. Such

officials shall, jointly, report to the President the quota of each nationality, determined as provided in subdivision (b), and the President shall proclaim and make known the quotas so reported. Such proclamation shall be made on or before April 1, 1927. If the proclamation is not made on or before such date, quotas proclaimed therein shall not be in effect for any fiscal year beginning before the expiration of 90 days after the date of the proclamation. After the making of a proclamation under this subdivision the quotas proclaimed therein shall continue with the same effect as if specifically stated herein, and shall be final and conclusive for every purpose except (1) in so far as it is made to appear to the satisfaction of such officials and proclaimed by the President, that an error of fact has occurred in such determination or in such proclamation, or (2) in the case provided for in subdivision (c) of section 12. If for any reason quotas proclaimed under this subdivision are not in effect for any fiscal year, quotas for such year shall be determined under subdivision (a) of this section.

(f) There shall be issued to quota immigrants of any nationality (1) no more immigration visas in any fiscal year than the quota for such nationality, and (2) in any calendar month of any fiscal year no more immigration visas than 10 per centum of the quota for such nationality, except that if such quota is less than 300 the number to be issued in any calendar month shall be prescribed by the Commissioner General, with the approval of the Secretary of Labor, but the total number to be issued during the fiscal year shall not be in excess of the quota for such nationality.

(g) Nothing in this Act shall prevent the issuance (without increasing the total number of immigration visas which may be issued) of an immigration visa to an immigrant as a quota immigrant even though he is a nonquota immigrant.

NATIONALITY

SEC. 12. (a) For the purposes of this act nationality shall be determined by country of birth, treating as separate countries the colonies, dependencies, or self-governing dominions, for which separate enumeration was made in the United States census of 1890; except that (1) the nationality of a child under twenty-one years of age not born in the United States, accompanied by its alien parent not born in the United States, shall be determined by the country of birth of such parent if such parent is entitled to an immigration visa, and the nationality of a child under twenty-one years of age not born in the United States, accompanied by both alien parents not born in the United States, shall be determined by the country of birth of the father if the father is entitled to an immigration visa; and (2) if a wife is of a different nationality from her alien husband and the entire number of immigration visas which may be issued to quota immigrants of her nationality for the calendar month has already been issued, her nationality may be determined by the country of birth of her husband if she is accompanying him and he is entitled to an immigration visa, unless the total number of immigration visas which may be issued to quota immigrants of the nationality of the husband for the calendar month has already been issued. An immigrant born in the United States who has lost his United States citizenship shall be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country, then in the country from which he comes.

(b) The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this act, prepare a statement showing the number of individuals of the various nationalities resident in continental United States as determined by the United States census of 1890, which statement shall be the population basis for the purposes of subdivision (a) of section II. In the case of a country recognized by the United States, but for which a separate enumeration was not made in the census of 1890, the number of individuals born in such country and resident in continental United States in 1890, as estimated by such officials jointly, shall be considered for the purposes of subdivision (a) of section II as having been determined by the United States census of 1890. In the case of a colony or dependency existing before 1890, but for which a separate enumeration was not made in the census of 1890 and which was not included in the enumeration for the country to which such colony or dependency belonged, or in the case of territory administered under a protectorate, the

number of individuals born in such colony, dependency, or territory, and resident in continental United States in 1890, as estimated by such officials jointly, shall be considered for the purposes of subdivision (a) of section II as having been determined by the United States census of 1890 to have been born in the country to which such colony or dependency belonged or which administers such protectorate.

(c) In case of changes in political boundaries in foreign countries occurring subsequent to 1890 and resulting in the creation of new countries, the Governments of which are recognized by the United States, or in the establishment of self-governing dominions, or in the transfer of territory from one country to another, such transfer being recognized by the United States, or in the surrender by one country of territory, the transfer of which to another country has not been recognized by the United States, or in the administration of territories under mandates, (1) such officials, jointly, shall estimate the number of individuals resident in continental United States in 1890 who were born within the area included in such new countries or self-governing dominions or in such territory so transferred or surrendered or administered under a mandate, and revise (for the purposes of subdivision (a) of section 11) the population basis as to each country involved in such change of political boundary, and (2) if such changes in political boundaries occur after the determination provided for in subdivision (c) of section 11 has been proclaimed, such officials, jointly, shall revise such determination, but only so far as necessary to allot the quotas among the countries involved in such change of political boundary. For the purpose of such revision and for the purpose of determining the nationality of an immigrant, (A) aliens born in the area included in any such new country or self-governing dominion shall be considered as having been born in such country or dominion, and aliens born in any territory so transferred shall be considered as having been born in the country to which such territory was transferred, and (B) territory so surrendered or administered under a mandate shall be treated as a separate country. Such treatment of territory administered under a mandate shall not constitute consent by the United States to the proposed mandate where the United States had not consented in a treaty to the administration of the territory by a mandatory power.

(d) The statements, estimates, and revisions provided in this section shall be made annually, but for any fiscal year for which quotas are in effect as proclaimed under subdivision (e) of section 11, shall be made only (1) for the purpose of determining the nationality of immigrants seeking admission to the United States during such year, or (2) for the purposes of clause (2) of subdivision (c) of this section.

(e) Such officials shall, jointly, report annually to the President the quota of each nationality under subdivision (a) of section 11, together with the statements, estimates, and revisions provided for in this section. The President shall proclaim and make known the quotas so reported and thereafter such quotas shall continue, with the same effect as if specifically stated herein, for all fiscal years except those years for which quotas are in effect as proclaimed under subdivision (e) of section 11, and shall be final and conclusive for every purpose.

EXCLUSION FROM UNITED STATES

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.

(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3.

(d) The Secretary of Labor may admit to the United States any otherwise admissible immigrant not admissible under clause (2) or (3) of subdivision (a) of this section, if satisfied that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel from the last port outside the United States and outside foreign contiguous territory, or, in the case of an immigrant coming from foreign contiguous territory, prior to the application of the immigrant for admission.

(e) No quota immigrant shall be admitted under subdivision (d) if the entire number of immigration visas which may be issued to quota immigrants of the same nationality for the fiscal year has already been issued. If such entire number of immigration visas has not been issued, then the Secretary of State, upon the admission of a quota immigrant under subdivision (d), shall reduce by one the number of immigration visas which may be issued to quota immigrants of the same nationality during the fiscal year in which such immigrant is admitted; but if the Secretary of State finds that it will not be practicable to make such reduction before the end of such fiscal year, then such immigrant shall not be admitted.

(f) Nothing in this section shall authorize the remission or refunding of a fine, liability to which has accrued under section 16.

DEPORTATION

SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the immigration act of 1917: *Provided*, That the Secretary of Labor may, under such conditions and restrictions as to support and care as he may deem necessary, permit permanently to remain in the United States, any alien child who, when under sixteen years of age was heretofore temporarily admitted to the United States and who is now within the United States and either of whose parents is a citizen of the United States.

MAINTENANCE OF EXEMPT STATUS

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clauses (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States.

PENALTY FOR ILLEGAL TRANSPORTATION

SEC. 16 (a) It shall be unlawful for any person, including any transportation company, or the owner, master, agent, charterer, or consignee of any vessel, to bring to the United States by water from any place outside thereof (other than foreign contiguous territory) (1) any immigrant who does not have an unexpired immigration visa, or (2) any quota immigrant having an immigration visa the visa in which specifies him as a nonquota immigrant.

(b) If it appears to the satisfaction of the Secretary of Labor that any immigrant has been so brought, such person, or transportation company, or the master, agent, owner, charterer, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each immigrant so brought, and in addition a sum equal to that paid by such immigrant for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the immigrant on whose account assessed. No vessel shall be granted clearance pending the determination of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determina-

tion of such question upon the deposit of an amount sufficient to cover such sums, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(c) Such sums shall not be remitted or refunded, unless it appears to the satisfaction of the Secretary of Labor that such person, and the owner, master, agent, charterer, and consignee of the vessel, prior to the departure of the vessel from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, (1) that the individual transported was an immigrant, if the fine was imposed for bringing an immigrant without an unexpired immigration visa or (2) that the individual transported was a quota immigrant, if the fine was imposed for bringing a quota immigrant the visa in whose immigration visa specified him as being a nonquota immigrant.

ENTRY FROM FOREIGN CONTIGUOUS TERRITORY

SEC. 17. The Commissioner General, with the approval of the Secretary of Labor, shall have power to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States from or through foreign contiguous territory. In prescribing rules and regulations and making contracts for the entry and inspection of aliens applying for admission from or through foreign contiguous territory due care shall be exercised to avoid any discriminatory action in favor of transportation companies transporting to such territory aliens destined to the United States, and all such transportation companies shall be required, as a condition precedent to the inspection or examination under such rules and contracts at the ports of such contiguous territory of aliens brought thereto by them, to submit to and comply with all the requirements of this act which would apply were they bringing such aliens directly to ports of the United States. After this section takes effect no alien applying for admission from or through foreign contiguous territory (except an alien previously lawfully admitted to the United States who is returning from a temporary visit to such territory) shall be permitted to enter the United States unless upon proving that he was brought to such territory by a transportation company which had submitted to and complied with all the requirements of this act, or that he entered, or has resided in, such territory more than two years prior to the time of his application for admission to the United States.

UNUSED IMMIGRATION VISAS

SEC. 18. If a quota immigrant of any nationality having an immigration visa is excluded from admission to the United States under the immigration laws and deported, or does not apply for admission to the United States before the expiration of the validity of the immigration visa, or if an alien of any nationality having an immigration visa issued to him as a quota immigrant is found not to be a quota immigrant, no additional immigration visa shall be issued in lieu thereor to any other immigrant.

ALIEN SEAMEN

SEC. 19. No alien seamen excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States.

SEC. 20. (a) The owner, charterer, agent, consignee, or master of any vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration officer in charge at the port of arrival has inspected such seaman (which inspection in all cases shall include a personal physical examination by the medical examiners), or who fails to detain such seaman on board after such inspection or to deport such seaman if required by such immigration officer or the Secretary of Labor to do so, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien seaman in respect of whom such failure occurs. No vessel shall be granted clearance pending the determination of the liability to the

payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(b) Proof that an alien seaman did not appear upon the outgoing manifest of the vessel on which he arrived in the United States from any place outside thereof, or that he was reported by the master of such vessel as a deserter, shall be prima facie evidence of a failure to detain or deport after requirement by the immigration officer or the Secretary of Labor.

(c) If the Secretary of Labor finds that deportation of the alien seaman on the vessel on which he arrived would cause undue hardship on such seaman he may cause him to be deported on another vessel at the expense of the vessel on which he arrived, and such vessel shall not be granted clearance until such expense has been paid or its payment guaranteed to the satisfaction of the Secretary of Labor.

(d) Section 32 of the immigration act of 1917 is repealed, but shall remain in force as to all vessels, their owners, agents, consignees, and masters, and as to all seamen, arriving in the United States prior to the enactment of this act.

PREPARATION OF DOCUMENTS

SEC. 21. (a) Permits issued under section 10 shall be printed on distinctive safety paper and shall be prepared and issued under regulations prescribed under this act.

(b) The Public Printer is authorized to print for sale to the public by the Superintendent of Public Documents, upon prepayment, additional copies of blank forms of manifests and crew lists to be prescribed by the Secretary of Labor pursuant to the provisions of sections 12, 13, 14, and 36 of the immigration act of 1917.

OFFENSES IN CONNECTION WITH DOCUMENTS

SEC. 22. (a) Any person who knowingly (1) forges, counterfeits, alters, or falsely makes any immigration visa or permit, or (2) utters, uses, attempts to use, possesses, obtains, accepts, or receives any immigration visa or permit, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or who, except under direction of the Secretary of Labor or other proper officer, knowingly (3) possesses any blank permit, (4) engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, (5) makes any print, photograph, or impression in the likeness of any immigration visa or permit, or (6) has in his possession a distinctive paper which has been adopted by the Secretary of Labor for the printing of immigration visas or permits, shall, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both.

(b) Any individual who (1) when applying for an immigration visa or permit, or for admission to the United States, personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name, or (2) sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, an immigration visa or permit, to any person not authorized by law to receive such document, shall, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both.

(c) Whoever knowingly makes under oath any false statement in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, shall, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both.

BURDEN OF PROOF

SEC. 23. Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws, and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof

he shall be entitled to the production of his immigration visa, if any, or of other documents concerning such entry, in the custody of the Department of Labor.

RULES AND REGULATIONS

SEC. 24. The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this act; but all such rules and regulations, in so far as they relate to the administration of this act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor.

ACT TO BE IN ADDITION TO IMMIGRATION LAWS

SEC. 25. The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act. An alien, although admissible under the provisions of this act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this act, and an alien, although admissible under the provisions of the immigration laws other than this act, shall not be admitted to the United States if he is excluded by any provision of this act.

STEAMSHIP FINES UNDER 1917 ACT

SEC. 26. Section 9 of the immigration act of 1917 is amended to read as follows:

"SEC. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in section 3 of this act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $250, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien who is excluded by the provisions of section 3 of this act because unable to read, or who is excluded by the terms of section 3 of this act as a native of that portion of the Continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precaution prior to the departure of such alien from a foreign port, such person shall pay to the collector of customs of

the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed.

"If a fine is imposed under this section for the bringing of an alien to the United States, and if such alien is accompanied by another alien who is excluded from admission by the last proviso of section 18 of this act, the person liable for such fine shall pay to the collector of customs, in addition to such fine but as a part thereof, a sum equal to that paid by such accompanying alien for his transportation from his initial point of departure indicated in his ticket, to the point of arrival, such sum to be delivered by the collector of customs to the accompanying alien when deported. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the collector of customs: *Provided further*, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section 3 of this act exempted from the excluding provisions of said section."

SEC. 27. Section 10 of the immigration act of 1917 is amended to read as follows:

"SEC. 10. (a) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

"(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers."

GENERAL DEFINITIONS

SEC. 28. As used in this act—

(a) The term "United States," when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Porto Rico, and the Virgin Islands; and the term "continental United States" means the States and the District of Columbia;

(b) The term "alien" includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed, nor citizens of the islands under the jurisdiction of the United States;

(c) The term "ineligible to citizenship," when used in reference to any individual, includes an individual who is debarred from becoming a citizen of the United States under section 2169 of the Revised Statutes, or under section 14 of the act entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6, 1882, or under section 1996, 1997, or 1998 of the Revised Statutes, as amended, or under section 2 of the act entitled "An act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, as amended, or under law amendatory of, supplementary to, or in substitution for, any of such sections;

(d) The term "immigration visa" means an immigration visa issued by a consular officer under the provisions of this act;

(e) The term "consular officer" means any consular or diplomatic officer of the United States designated, under regulations prescribed under this act, for the purpose of issuing immigration visas under this act. In case of the Canal Zone and the insular possessions of the United States the term "consular officer" (except as used in section 24) means an officer designated by the President, or by his authority, for the purpose of issuing immigration visas under this act;

(f) The term "Immigration act of 1917" means the act of February 5, 1917, entitled "An act to regulate the immigration of aliens to, and the residence of aliens in the United States";

(g) The term "immigration laws" includes such act, this act, and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens;

(h) The term "person" includes individuals, partnerships, corporations, and associations;

(i) The term "Commissioner General" means the Commissioner General of Immigration;

(j) The term "application for admission" has reference to the application for admission to the United States and not to the application for the issuance of the immigration visa;

(k) The term "permit" means a permit issued under section 10;

(l) The term "unmarried," when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married;

(m) The terms "child," "father," and "mother," do not include a child or parent by adoption unless the adoption took place before January 1, 1924;

(n) The terms "wife" and "husband" do not include a wife or husband by reason of a proxy or picture marriage.

AUTHORIZATION OF APPROPRIATION

SEC. 29. The appropriation of such sums as may be necessary for the enforcement of this act is hereby authorized.

ACT OF MAY 19, 1921

SEC. 30. The act entitled "An act to limit the immigration of aliens into the United States," approved May 19, 1921, as amended and extended, shall, notwithstanding its expiration on June 30, 1924, remain in force thereafter for the imposition, collection, and enforcement of all penalties that may have accrued thereunder and any alien who prior to July 1, 1924, may have entered the United States in violation of such act or regulations made thereunder may be deported in the same manner as if such act had not expired.

TIME OF TAKING EFFECT

SEC. 31. (a) Sections 2, 8, 13, 14, 15, and 16, and subdivision (f) of section 11, shall take effect on July 1, 1924, except that immigration visas and permits may be issued prior to that date, which shall not be valid for admission to the United States before July 1, 1924. In the case of quota immigrants of any nationality, the number of immigration visas to be issued prior to July 1, 1924, shall not be in excess of 10 per centum of the quota for such nationality, and the number of immigration visas so issued shall be deducted from the number which may be issued during the month of July, 1924. In the case of immigration visas issued before July 1, 1924, the four-month period referred to in subdivision (c) of section 2 shall begin to run on July 1, 1924, instead of at the time of the issuance of the immigration visa.

(b) The remainder of this act shall take effect upon its enactment.

(c) If any alien arrives in the United States before July 1, 1924, his right to admission shall be determined without regard to the provisions of this act, except section 23.

SAVING CLAUSE IN EVENT OF UNCONSTITUTIONALITY

SEC. 32. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved, May 26, 1924.

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